

LEGISLATIVE JOURNAL
OF THE
STATE OF NEBRASKA

NINETY-SECOND LEGISLATURE
SECOND SPECIAL SESSION

1992

Convened July 31, 1992

Adjourned August 12, 1992

LINCOLN, NEBRASKA

Compiled

Under the Authority of the Legislature

by

PATRICK J. O'DONNELL, CLERK

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LEGISLATURE

MEMBERS

Dist.	Name	Address	Occupation	Counties
1	Spencer W. Morrissey	Tecumseh	Track Inspector	Johnson, Nemaha, Otoe*, Pawnee, Richardson
2	Roger R. Wehrbein	Plattsmouth	Farmer/Feeder	Cass, Otoe*
3	Emil E. Beyer, Jr.	Gretna	Real Estate Investments, Catering	Douglas*, Sarpy*
4	Thomas R. Horgan	Omaha	President, Nebraska	Douglas*
			Independent College Foundation	
5	Bernice Labedz	Omaha	Retired	Douglas*
6	Brad Ashford	Omaha	Attorney	Douglas*
7	Timothy J. Hall	Omaha		Douglas*
8	Eric Will	Omaha	State Senator	Douglas*
9	John C. Lindsay	Omaha	Attorney	Douglas*
10	Carol McBride Pirsch	Omaha	Manager of	Douglas*
			Customer Relations	
11	Ernie Chambers	Omaha	Defender of	Douglas*
			the Downtrodden	
12	Chris Abboud	Omaha	Attorney at Law	Douglas*
13	Daniel C. Lynch	Omaha	Insurance	Douglas*
14	Ron Withem	Papillion	Executive Director of	Sarpy*
			Mechanical Contractor's Assoc.	
15	Lowell C. Johnson	North Bend	Farm and Property	Dodge*
			Management	
16	C. N. "Bud" Robinson	Blair	Educator and	Burt, Cuming*, Thurston, Washington
			Businessman	

Dist.	Name	Address	Occupation	Counties
17	Gerald Conway	Wayne	Consultant.....	Dakota, Dixon, Wayne*
18	Stan Schellpeper	Stanton	Farmer/Feeder.....	Colfax, Cuming*, Dodge*, Stanton
19	Elroy M. Hefner.....	Coleridge	Business Executive	Cedar, Knox, Pierce, Wayne*
20	Jessie K. Rasmussen.....	Omaha	Special Ed. Teacher.....	Douglas*
21	Richard Peterson	Norfolk	Farmer/Beekeeper/ Businessman	Madison
22	Jennie Robak.....	Columbus	Homemaker/Disaster Reservist FEMA	Boone*, Nance, Platte*
23	Loran Schmit.....	Bellwood	Farmer.....	Butler, Platte*, Saunders
24	Scott Moore.....	Seward.....	Farmer/State Senator.....	Polk*, Seward, York
25	Jerome Warner.....	Waverly.....	Livestock/Farming.....	Lancaster*
26	Don Wesely.....	Lincoln	Senior Research Associate-LTT	Lancaster*
27	DiAnna R. Schimek.....	Lincoln		Lancaster*
28	Chris Bentler	Lincoln	Attorney, Businessman	Lancaster*
29	LaVon Crosby	Lincoln		Lancaster*
30	Dennis M. Byars.....	Beatrice	Development Officer for Martin Luther Home	Gage, Jefferson*
31	Jerry Chizek	Omaha	Public Affairs Manager	Douglas*
32	George Coordsen.....	Hebron.....	Farmer.....	Fillmore, Jefferson*, Saline, Thayer
33	Ardyce L. Bohlke	Hastings.....		Adams
34	Rod Johnson	Sutton		Clay, Hall*, Hamilton, Merrick, Polk*
35	Arlene Nelson	Grand Island	State Senator	Hall*

Dist.	Name	Address	Occupation	Counties
36	Jim D. Cudaback.....	Riverdale.....	Property Manager.....	Buffalo*, Hall*
37	Douglas A. Kristensen.....	Minden.....	Attorney.....	Buffalo*, Franklin, Kearney, Nuckolls, Webster
38	W. Owen Elmer.....	Indianola.....	Agri-Business.....	Frontier, Furnas, Gosper, Harlan, Lincoln*, Red Willow
39	Edward J. Schrock.....	Elm Creek.....	Farmer.....	Dawson, Phelps
40	Merton L. Dierks.....	Ewing.....	Veterinarian/Rancher.....	Antelope, Boone*, Boyd, Holt
41	Carson H. Rogers.....	Ord.....	Pork Producer.....	Custer*, Garfield, Greeley, Hall*, Howard, Loup, Sherman, Valley, Wheeler
42	David F. Bernard-Stevens.....	North Platte.....	Educator/State Senator.....	Lincoln*
43	Howard A. Lamb.....	Anselmo.....	Rancher.....	Blaine, Brown, Cherry, Custer*, Hooker, Keya Paha, Logan, McPherson, Rock, Thomas
44	Rex Haberman.....	Imperial.....	State Senator.....	Arthur, Chase, Deuel, Dundy, Grant, Hayes, Hitchcock, Keith, Lincoln*, Perkins
45	D. Paul Hartnett.....	Bellevue.....	College Professor.....	Sarpy*
46	David Landis.....	Lincoln.....	College Instructor.....	Lancaster*
47	Dennis G. Baack.....	Kimball.....	Consultant.....	Banner, Cheyenne, Garden, Kimball, Morrill, Scotts Bluff*
48	Joyce Hillman.....	Gering.....		Scotts Bluff*
49	Wm. R. "Bob" Wickersham.....	Harrison.....	Attorney.....	Box Butte, Dawes, Sheridan, Sioux

Clerk

Patrick J. O'Donnell Lincoln

RULES OF THE LEGISLATURE

Rules in effect at the commencement of the Ninety-Second Legislature, Second Special Session, 1992, are the same rules in effect at the commencement of the Ninety-Third Legislature, First Session, 1993.

FIRST DAY - JULY 31, 1992
LEGISLATIVE JOURNAL
NINETY-SECOND LEGISLATURE
SECOND SPECIAL SESSION

FIRST DAY

Legislative Chamber, Lincoln, Nebraska
Friday, July 31, 1992

Pursuant to a proclamation by His Excellency, E. Benjamin Nelson, Governor of the State of Nebraska, the Ninety-Second Legislature, Second Special Session, assembled in the West Legislative Chamber of the State Capitol, at the hour of 3:05 p.m., Friday, July 31, 1992, and was called to order by Speaker Baack.

PRAYER

The prayer was offered by Rev. Harland Johnson, Chaplain Coordinator.

ROLL CALL

The roll was called and the following members were present:

Ashford, Brad	Hall, Tim	Robak, Jennie
Baack, Dennis	Hefner, Elroy M.	Robinson, C. N. Bud
Bernard-Stevens, David F.	Horgan, Thomas R.	Rogers, Carson
Beutler, Chris	Johnson, Lowell C.	Schellpeper, Stan
Beyer, Emil E., Jr.	Johnson, Rod	Schimek, DiAnna R.
Bohlke, Ardyce L.	Labeledz, Bernice	Schmit, Loran
Byars, Dennis M.	Lamb, Howard A.	Schrock, Edward
Chambers, Ernie	Landis, David M.	Warner, Jerome
Conway, Gerald	Lindsay, John C.	Wehrbein, Roger R.
Coordsen, George	Moore, Scott	Wesely, Don
Cudaback, Jim D.	Morrissey, Spencer W.	Will, Eric
Dierks, Merton L.	Peterson, Richard	
Elmer, W. Owen	Rasmussen, Jessie K.	

The following members were excused:

Abboud, Chris
 Chizek, Jerry
 Crosby, LaVon
 Haberman, Rex S.

Hartnett, D. Paul
 Hillman, Joyce
 Kristensen, Doug
 Lynch, Daniel C.

Nelson, Arlene
 Pirsch, Carol McBride
 Wickersham, William R.
 Withem, Ron

DECLARATION

Pursuant to a proclamation issued by the Honorable E. Benjamin Nelson, Governor of Nebraska, we are here and now assembled in the 92nd Legislature, 2nd Special Session of the Nebraska Legislature. I, as Acting President of the Legislature, declare that we are now open for the transaction of business.

(Signed) Dennis Baack
 Speaker of the Legislature

CERTIFICATE

STATE OF NEBRASKA

United States of America,)
) ss. Department of State
 State of Nebraska)

I, Allen J. Beermann, Secretary of State of the State of Nebraska do hereby certify that the attached is a true and correct copy of a Proclamation by the Governor of the State of Nebraska calling an Extraordinary Session of the Legislature.

I hereby certify that the attached document was filed in the office of the Secretary of State on the twenty-eighth day of July, 1992.

Finally, I hereby certify that a copy of this proclamation is on file in the office of the Secretary of State and is a matter of public record.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State of Nebraska.

Done at Lincoln this Twenty-ninth day of July in the year of our Lord, one thousand nine hundred and ninety-two.

(SEAL) Allen J. Beermann, Secretary of State

PROCLAMATION

BY VIRTUE OF THE AUTHORITY VESTED in the Governor by Article IV, Section 8, of the Constitution of the State of Nebraska, I, E. Benjamin Nelson, as Governor of the State of Nebraska, believing that an extraordinary occasion has arisen, DO HEREBY CALL the Legislature of Nebraska to convene in extraordinary session at the State Capitol on July 31, 1992, at 3:00 p.m. for the purpose of considering and enacting legislation on only the following subjects:

1. Legislation to correct certain potential constitutional infirmities of Laws 1992, LB 1063 by eliminating conditional language relating to the passage of a constitutional amendment in 1992, to repeal sections of Laws 1992, LB 1063 made obsolete by the passage of a constitutional amendment in 1992, to reenact other sections of Laws 1992, LB 1063, not amended by Laws 1992, LB 719A, and to repeal sections repealed by LB 1063.
2. Legislation to correct unconstitutional provisions of Laws 1991, LB 614 pursuant to Day vs. Nelson, No. S-92-229, slip op. (Neb. S. Ct. July 2, 1992).
3. Appropriate funds for the necessary expenses of the extraordinary session herein called.

I direct that members of the Legislature of the State of Nebraska be notified of the convening of this extraordinary session by presenting to each of them a copy of this Proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the Great Seal of the State of Nebraska to be affixed this 27th day of July in the year of the Lord One Thousand Nine Hundred and Ninety-Two.

(Signed) E. BENJAMIN NELSON
Governor

(SEAL)Attest:

(Signed) ALLEN J. BEERMANN
Secretary of State

MOTION - Election of Officers

Mr. Warner moved that the following officers be elected to serve for the Ninety-Second Legislature, Second Special Session:

Patrick J. O'Donnell
Richard K. Brown
Carl E. Kamprath
Harland Johnson

CERTIFICATE

STATE OF NEBRASKA

DISTRICT	NAME	ELECTED
1	Spencer W. Morrissey	November 8, 1988
2	Roger R. Wehrbein	November 6, 1990
3	Emil E. Beyer, Jr.	November 8, 1988
4	Thomas R. Horgan	November 6, 1990
5	Bernice Koziol Labedz	November 8, 1988

6	Brad Ashford	November 6, 1990
7	Tim Hall	November 8, 1988
8	Eric Will	November 6, 1990
9	John C. Lindsay	November 8, 1988
10	Carol McBride Pirsch	November 6, 1990
11	Ernie Chambers	November 8, 1988
12	Chris Abboud	November 6, 1990
13	Daniel C. Lynch	November 8, 1988
14	Ron Withem	November 6, 1990
15	Lowell C. Johnson	November 8, 1988
16	C. N. Bud Robinson	November 6, 1990
17	Gerald Conway	November 8, 1988
18	Stan Schellpeper	November 6, 1990
19	Elroy M. Hefner	November 8, 1988
20	Jessie K. Rasmussen	November 6, 1990
21	Richard Peterson	November 8, 1988
22	Jennie Robak	November 6, 1990
23	Loran Schmit	November 8, 1988
24	Scott Moore	November 6, 1990
25	Jerome Warner	November 8, 1988
26	Don Wesely	November 6, 1990
27	DiAnna R. Schimek	November 8, 1988
28	Chris Beutler	November 6, 1990
29	LaVon Crosby	November 8, 1988
30	Dennis M. Byars	November 6, 1990
31	Jerry Chizek	November 8, 1988
32	George Coordsen	November 6, 1990
33	Ardyce L. Bohlke	Appointed 7-1-91 ***
34	Rod Johnson	November 6, 1990
35	Arlene Nelson	November 8, 1988
36	Jim D. Cudaback	November 6, 1990
37	Doug Kristensen	November 8, 1988
38	W. Owen Elmer	November 6, 1990
39	Edward Schrock	Appointed 12-31-90 *
40	Merton L. Dierks	November 6, 1990
41	Carson Rogers	November 8, 1988
42	David F. Bernard-Stevens	November 6, 1990
43	Howard A. Lamb	November 8, 1988
44	Rex S. Haberman	November 6, 1990
45	D. Paul Hartnett	November 8, 1988
46	David M. Landis	November 6, 1990
47	Dennis Baack	November 8, 1988
48	Joyce Hillman	November 6, 1990
49	William R. Wickersham	Appointed 1-9-91 **

*Appointed 12-31-90 to replace William E. Barrett (resigned)

**Appointed 1-9-91 to replace Sandra K. Scofield (resigned)

***Appointed 7-1-91 to replace Jacklyn J. Smith (resigned)

MESSAGE FROM THE SECRETARY OF STATE

June 9, 1992

Madam President, Mr. Speaker and
Members of the Legislature
State Capitol
Lincoln, Nebraska 68509

Dear Madam President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment requiring legislative confirmation:

Robert W. Shively, Lincoln, Nebraska 68516, to the Nebraska Accountability and Disclosure Commission to complete an unexpired six year term ending June 30, 1995.

This appointment was made by me pursuant to the provisions of Sections 49-14,105, 49-14,110, 49-14,112 and 49-14,114 and is respectfully submitted for your consideration.

Sincerely,
(Signed) ALLEN J. BEERMANN
Secretary of State

XC: Robert W. Shively
Accountability and Disclosure Commission
Senator Gerald Conway

MESSAGES FROM THE GOVERNOR

April 9, 1992

Madam President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Madam President and Senators:

FIRST DAY - JULY 31, 1992

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This is to inform the honorable members of the Legislature that I have made the following appointment to the Crime Victims Reparation Committee, requiring legislative approval.

APPOINTEE: Jack D. Campbell, 7917 Miami St., Omaha, NE 68134, 402-390-2010.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) E. Benjamin Nelson
Governor

EBN:fc

April 9, 1992

Madam President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Madam President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Crime Victims Reparation Committee, requiring legislative approval.

APPOINTEE: James J. Riskowski, 9966 Devonshire Rd., Omaha, NE 68114, 402-399-0124 h, 402-393-4100 w.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) E. Benjamin Nelson
Governor

EBN:fc

June 16, 1992

Madam President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Madam President and Senators:

This is to inform you, the honorable members of the Legislature, that I have made the following appointment to the Motor Vehicle Industry Licensing Board, requiring legislative approval:

APPOINTEE: Vera Dulaney, Scotts Bluff County Clerk,
Administration Bldg., Gering, NE 69341, 308/436-2603 H,
308/436-6600 B.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) E. Benjamin Nelson
Governor

EBN/klf

June 16, 1992

Madam President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Madam President and Senators:

This is to inform you, the honorable members of the Legislature, that I have made the following appointment to the Dry Bean Commission, requiring legislative approval:

APPOINTEE: Dale Johnson, R.R. 1, Box 139, Brule, NE 69127,
308/287-2290 H, 308/287-2290 B.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) E. Benjamin Nelson
Governor

EBN/klf

June 16, 1992

Madam President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Madam President and Senators:

This is to inform you, the honorable members of the Legislature, that I have made the following appointment to the Commission for the Hearing Impaired, requiring legislative approval:

APPOINTEE: Linsay R. Darnall, P. O. Box 65, Polk, NE 68654,
402/765-6871 (TDD only) H.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) E. Benjamin Nelson
Governor

EBN/klf

June 16, 1992

Madam President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Madam President and Senators:

This is to inform you, the honorable members of the Legislature, that I have made the following appointment to the Commission for the Hearing Impaired, requiring legislative approval:

APPOINTEE: Julie A. Dahlke, 1412 S. 7th St., Lincoln, NE
68502, 402/477-8183 (TDD only) H, 402/471-8694 (TDD only)
B.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) E. Benjamin Nelson
Governor

EBN/klf

June 16, 1992

Madam President, Mr. Speaker
and Members of the Legislature

State Capitol Building
Lincoln, NE 68509

Dear Madam President and Senators:

This is to inform you, the honorable members of the Legislature, that I have made the following appointment to the Commission for the Hearing Impaired, requiring legislative approval:

APPOINTEE: David F. Conway, 5011 Chicago St., Omaha, NE 68132, 402/558-4105 H, 402/554-3339 B.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) E. Benjamin Nelson
Governor

EBN/klf

June 16, 1992

Madam President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Madam President and Senators:

This is to inform you, the honorable members of the Legislature, that I have made the following appointment to the Board of Educational Lands and Funds, requiring legislative approval:

APPOINTEE: Patrick G. Rogers, 609 S. Pierce, Randolph, NE 68771, 402/337-0823 H, 402/337-0808 B.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) E. Benjamin Nelson
Governor

EBN/klf

June 16, 1992

Madam President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Madam President and Senators:

This is to inform you, the honorable members of the Legislature, that I have made the following appointment to the Board of Public Roads Classifications and Standards, requiring legislative approval:

APPOINTEE: James W. Bauer, Director of Public Works, P. O.
Box 279, Beatrice, NE 68310, 402/223-5211 H, 402/223-5651 B.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) E. Benjamin Nelson
Governor

EBN/klf

June 16, 1992

Madam President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Madam President and Senators:

This is to inform you, the honorable members of the Legislature, that I have made the following appointment to the Board of Public Roads Classifications and Standards, requiring legislative approval:

APPOINTEE: Eldon Orth, Materials and Tests Engineer,
Department of Roads, Box 94759, Lincoln, NE 68509,
402/479-4750 B.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) E. Benjamin Nelson
Governor

EBN/klf

June 16, 1992

Madam President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Madam President and Senators:

This is to inform you, the honorable members of the Legislature, that I have made the following appointment to the Board of Public Roads Classifications and Standards, requiring legislative approval:

APPOINTEE: Henry R. Thieman, P. O. Box 84, Petersburg, NE 68652, 402/386-5584 H, 402/386-5599 B.

This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
E. Benjamin Nelson
Governor

EBN/klf

June 16, 1992

Madam President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Madam President and Senators:

This is to inform you, the honorable members of the Legislature, that I have made the following appointment to the Board of Public Roads Classifications and Standards, requiring legislative approval:

APPOINTEE: David O. Janke, 1825 N. 269th Plz., Waterloo, NE 68069, 402/359-2868 H, 402/330-3203 B.

This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
E. Benjamin Nelson
Governor

EBN/klf

June 16, 1992

Madam President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Madam President and Senators:

This is to inform you, the honorable members of the Legislature, that I have made the following appointment to the Board of Public Roads Classifications and Standards, requiring legislative approval:

APPOINTEE: Larry L. Herrmann, 10325 P St., Omaha, NE
68127-2150, 402/339-7983 H, 402/444-5228 B.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) E. Benjamin Nelson
Governor

EBN/klf

June 16, 1992

Madam President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Madam President and Senators:

This is to inform you, the honorable members of the Legislature, that I have made the following appointment to the Board of Public Roads Classifications and Standards, requiring legislative approval:

APPOINTEE: David L. Coolidge, 1009 E. 6th St., McCook, NE
69001, 308/345-1697 H.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) E. Benjamin Nelson
Governor

EBN/klf

June 17, 1992

Madam President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Madam President and Senators:

This is to inform you, the honorable members of the Legislature, that I have made the following appointment to the Nebraska Parole Board, requiring legislative approval:

APPOINTEE: Steven M. Renteria, 1850 First Ntl. Ctr., 1620
Dodge St., Omaha, NE 68102-1505, 402/342-4200.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) E. Benjamin Nelson
Governor

EBN/klf

June 17, 1992

Madam President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Madam President and Senators:

This is to inform you, the honorable members of the Legislature, that I have made the following appointment to the Board of Health, requiring legislative approval:

APPOINTEE: Mark A. Kellough, 2501 Jacquelyn Dr., Lincoln,
NE 68512, 402/423-8603 H, 402/483-2544 B.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) E. Benjamin Nelson

FIRST DAY - JULY 31, 1992

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Governor

EBN/klf

June 17, 1992

Madam President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Madam President and Senators:

This is to inform you, the honorable members of the Legislature, that I have made the following appointment to the Environmental Control Council, requiring legislative approval:

APPOINTEE: Robert H. Warrick, R.R. 2, Box 11, Meadow Grove, NE 68752, 402/634-2361 H, 402/634-2361 B.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) E. Benjamin Nelson
Governor

EBN/klf

June 30, 1992

Madam President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Madam President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Ethanol Authority and Development Board, requiring legislative approval.

APPOINTEE: Gary S. Goldberg, Rt. 1, Box 229, Kearney, NE 68847, 308-234-6381 home.

This appointment is respectfully submitted for your consideration.

Sincerely,

(Signed) E. Benjamin Nelson
Governor

July 9, 1992

Madam President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Madam President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Board of Public Roads, Classification and Standards, requiring legislative approval.

APPOINTEE: Ed Gilbert, 1919 Hansen Dr., Omaha, NE 68123.

This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
E. Benjamin Nelson
Governor

July 30, 1992

Madam President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Madam President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Nebraska Liquor Commission, requiring legislative approval.

APPOINTEE: John (Jack) M. Crowley, 401 Lochland Rd.,
Hastings, NE 68901, (402) 462-8289 h, (402) 462-4000 w.

This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
E. Benjamin Nelson
Governor

COMMUNICATION

April 29, 1992

Patrick O'Donnell
Clerk of the Legislature
2018 State Capitol
Lincoln, NE 68509

Dear Mr. O'Donnell:

This letter is in response to L.R. 442, in which the Legislature has requested the Attorney General to consider possible settlement of any claims arising out of the insolvency of Commonwealth Savings Company in 1983 and the ensuing bankruptcies of American Savings Company and State Security Savings. The Legislature has asked this office to report and recommend any settlements of any such claims as are "legally justified and defensible."

While it may be said that a moral or ethical obligation exists for the payment of these claims, for the reasons stated below, it is doubtful that any enforceable legal obligation exists. Accordingly, we must recommend that any additional payment of these claims be made on public policy grounds by the Legislature within constitutional limits or that the Administration, through the State Claims Board, provide specific policy direction for the settlement of the claims.

In the aftermath of the Commonwealth collapse a significant number of claims and lawsuits of various types were filed by, or on behalf of, depositors and creditors of Commonwealth, American Savings and State Security. Some of these claims and actions were against the State of Nebraska directly, while others were against former officials of the Department of Banking and Finance. Some were combined with actions against former directors of the Nebraska Depository Institution Guaranty Corporation (NDIGC) and their employees. With one exception (which will be discussed below), all of these claims and lawsuits were rejected by the courts and dismissed without the state or any former or present state official being ordered to pay anything to the claimants. The courts agreed with the defenses presented on behalf of the state and its officials and agreed in every case to a dismissal without ever getting past the very preliminary pleading stage of the lawsuits. Whenever appeals were pursued by the claimants, the trial court decisions were affirmed.

Accordingly, as to all of these claims and lawsuits which have been dismissed and resolved in favor of the state and its officials by the courts, there is no legal basis to consider settlement.

The only claims which resulted in any payment by the state were two claims filed very early after the Commonwealth insolvency by the court-appointed Commonwealth receiver. These tort claims were based on alleged negligence and other wrongdoing by the State's Department of Banking and Finance in the regulation of Commonwealth and of the NDIGC. The Commonwealth receivership, represented by attorney M.J. Bruckner and later by attorney Robert T. Gruit, negotiated with the State of Nebraska Represented by appointed Special Assistant Attorney General Edwin Perry, to obtain the maximum recovery on these claims. In this process large claims were approved twice by the State Claims Board, only to be rejected by the District Court of Lancaster County, which, by law, was required to approve any large payment on a tort claim against the State. Eventually, after these two court rejections of larger sums, the parties reached a compromise figure of \$8.5 million. After notice and hearing the court considered and approved payment of that amount by the State.

The Legislature subsequently appropriated the \$8.5 million for payment to the Commonwealth receivership, and it was paid in September 1985. In return for this payment, both the court and the Legislature specifically required the Commonwealth receiver to execute a release which released any and all claims and causes of action on behalf of the receivership and Commonwealth's depositors and creditors which they might have to that point against the State or the State's officers and employees arising out of the Commonwealth collapse, the regulation of Commonwealth and the NDIGC. The payment and the execution of the release by the receiver brought those two claims to an end.

In 1990, the Legislature appropriated \$33.8 million to depositors who had suffered losses due to the failure of Commonwealth, American Savings and State Security. (1990 Neb.Laws LB 272A). This appropriation was defended by the Attorney General's Office. However, the Nebraska Supreme Court declared this appropriation to be unconstitutional. Haman v. Marsh, 237 Neb. 699 (1991). In April of 1991, I filed a Motion for Rehearing which was denied by the Court.

We are aware of only one currently pending lawsuit or claim which has not been fully resolved in favor of the state. Lohmeier, et al. v. Badami, et al., District Court of Lancaster County, Docket 472, Page 209, was filed by attorney John W. DeCamp on behalf of several Commonwealth depositors in September 1991. According to plaintiff's amended petition, this is a purported "derivative action" brought on behalf of the Commonwealth receivership to recover for alleged wrongful acts and omissions of the state and of the current receiver, Joseph Badami, which, allegedly damaged the receivership. Plaintiffs also maintain that they are proceeding on behalf of depositors and creditors of State Security Savings, although it is unclear how such a

claim is properly involved in this lawsuit. Plaintiffs assert that they are proceeding against the state under the State Tort Claims Act.

The Attorney General's Office is defending in Lohmeier on behalf of the State; and we have, of course, reviewed plaintiffs' amended petition and underlying tort claim. We believe that there are a number of valid defenses to be raised by the state to defeat the causes of action alleged by the plaintiffs. Therefore, we have filed a demurrer (a legal pleading challenging the legal sufficiency of the plaintiffs' amended petition) and have asked the court to dismiss the action against the State. The demurrer is set for hearing before District Judge William D. Blue on June 2, 1992.

We have reason to believe that the district court will agree with all or some of the defenses we are raising in the demurrer and that there is a good probability the court will, in fact, dismiss plaintiffs' action against the State of Nebraska. Therefore, given this posture of the case and our analysis of it, a settlement on legal grounds by the Attorney General's Office would not be legally appropriate.

As to any claims or lawsuits which may be filed in the future by or on behalf of depositors and creditors of Commonwealth, American Savings and/or State Security against the State and/or its officials and employees, we will, as usual, review and analyze them on a case-by-case basis to determine if there is settlement value or if we will simply defend them vigorously. However, it should be noted that, given (1) the passage of considerable time since the events causing the losses occurred, (2) the release signed by the Commonwealth receiver referred to above and (3) the body of law which has now developed out of this situation supporting several defenses available to the State and its officials, it is very unlikely that settlement by the Attorney General's Office of any additional claims or lawsuits by or on behalf of depositors and creditors of these insolvent financial institutions would be legally appropriate.

In Attorney General Opinion No. 91027, dated April 10, 1991, we analyzed three options proposed by Governor Nelson and Senators Wesely, Landis, Schimek, Beutler, Crosby and Warner to provide for depositor repayment. The first option was a proposed amendment to the Crime Victims Reparation Act to allow for repayment of depositor claims. The second proposal concerned legislation providing a state income tax credit to depositors to reimburse them for losses. The final proposal involved amending the state constitution to allow revenue from a state lottery to be used for the purpose of reimbursing depositors. This final option was adopted by the Legislature as LR 24CA. This proposed amendment will be placed before the voters in November of this year and, if adopted by the people, provides a legal vehicle for the repayment of depositors.

In conclusion, "the issue of final resolution of the collapse of the industrial bank system in Nebraska," as addressed in L.R. 442, is primarily a policy question and a moral question rather than a legal matter at this point. Therefore, this issue is most appropriately handled by the policy making bodies of State government.

There is, however, some uncertainty in almost every legal proceeding. The State Claims Board, appointed by, and serving at the pleasure of the Governor, is charged with the initial authority to fairly resolve the type of claim at issue. Should the one currently pending claim be returned, for any reason, to the State Claims Board for further consideration, this office would defend to the best of our ability any payment authorized by the Board.

The desire of the Legislature to conclude this matter is commendable and understandable and one with which we are sympathetic. However, the matter is no longer so much a legal one as a policy or political matter to be decided by the State's policy-making bodies on grounds of ethical considerations and fundamental fairness.

Sincerely,
(Signed) Don Stenberg
Attorney General

cc: Governor E. Benjamin Nelson
Senator Schmit
Senator Landis
Senator Moore
Senator Beutler
Senator Wesely
Senator Crosby
Senator Schimek

ATTORNEY GENERAL'S OPINIONS

Opinion No. 92064

DATE: April 27, 1992

SUBJECT: LB 1063 - Constitutionality of Legislation
Containing Alternative Provisions, One of Which
Will Operate Depending Upon the Approval or
Rejection of a Constitutional Amendment.

REQUESTED BY: Senator Scott Moore
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General

L. Jay Bartel, Assistant Attorney General

You have requested our opinion regarding the constitutionality of LB 1063, enacted this year by the Nebraska Legislature and signed by Governor Nelson. LB 1063 contains various provisions pertaining to the subject of revenue and taxation, and includes several provisions relating to property taxation. In particular, the bill contains sections providing for two alternative means for the taxation of tangible personal property (other than motor vehicles), the operation of which will depend upon the adoption of "a constitutional amendment amending Article VIII of the Constitution of Nebraska" in 1992. Generally, the bill provides that, if a constitutional amendment to Article VIII of the Constitution is not adopted, tangible personal property (other than specified exempt property) shall be taxed at its actual value. LB 1063, §§ 52 and 53. Alternatively, the bill provides that, if "a constitutional amendment amending Article VIII of the Constitution of Nebraska is adopted in 1992," tangible personal property which constitutes "depreciable tangible personal property" will be taxed at its "net book value," as defined in the act, and other tangible personal property will be exempted from taxation. LB 1063, §§ 47-48, 52-53.

In your request, you note that LR 219CA, the proposed constitutional amendment to be placed on the May primary ballot as Amendment 1, includes a provision expressly declaring that, "Notwithstanding Article I, section 16, Article III, section 18, or Article VIII, section 1 or 4, of this Constitution or any other provision of this Constitution to the contrary, amendments to Article VIII of this Constitution passed in 1992 shall be effective from and after January 1, 1992, . . ." LR 219CA, § CVIII-13. This portion of the proposed amendment further provides that "existing revenue laws and legislative acts passed in the regular legislative session of 1992, not inconsistent with this Constitution as amended, shall be considered ratified and confirmed by such amendment without the need for legislative reenactment of such laws." Id.

Your specific question, in view of the foregoing, is whether LR 219CA is "adequate to make the property tax provisions of LB 1063 constitutional and operative, or will the Legislature need to reconvene if the amendment is adopted and reenact the law?"

At the outset, we note that, as a general rule, we do not issue opinions to members of the Legislature on questions addressing the constitutionality of existing legislation. See Attorney General Opinion No. 157, December 20, 1985. In this instance, however, your question pertains to the possible need for the Legislature to reenact particular legislation in the event the voters approve the constitutional amendment proposed under LR 219CA. Thus, under these circumstances, your

request does pertain to a matter relating to a legislative purpose, and, as such, we will respond to your request for our opinion.

In light of the scenario presented, it appears that two principal issues are raised by the Legislature's enactment of LB 1063, and the relationship which exists between the bill and the constitutional amendment proposed under LR 219CA. These issues are: (1) Whether LB 1063, by including alternative provisions for the taxation of personal property, one of which will operate depending upon the approval or rejection of a constitutional amendment, establishes an unconstitutional delegation of legislative power to the electorate; and (2) Whether the language of LR 219CA, providing that, if the amendment is adopted, legislation enacted "in the regular legislative session of 1992. . . shall be considered ratified and confirmed. . . without the need for legislative reenactment of such laws," is sufficient to remedy any constitutional deficiency associated with LB 1063.

I. UNLAWFUL DELEGATION OF LEGISLATIVE POWER TO THE ELECTORATE.

It is the general rule that where an act is clothed with all the forms of law and is complete in and of itself, it is fairly within the scope of the legislative power to prescribe that it shall become operative only on the happening of some specified contingency, contingencies, or succession of contingencies.

16 C.J.S. Constitutional Law § 166 (1984).

While "{t}he Legislature cannot delegate its powers to make a law, . . . it can make a law to become operative on the happening of a certain contingency or on an ascertainment of a fact upon which the law intends to make its own action depend." Lennox v. Housing Authority of the City of Omaha, 137 Neb. 582, 590, 290 N.W. 451, 457 (1940). Accord State ex rel. Douglas v. Sporhase, 208 Neb. 703, 305 N.W.2d 614 (1981), rev'd on other grounds 458 U.S. 941 (1982); State v. Padley, 195 Neb. 358, 237 N.W.2d 883 (1976). See also Wilson v. Marsh, 162 Neb. 237, 75 N.W.2d 723 (1956) (Legislature may postpone the operative date of legislation beyond three months after adjournment of legislative session to a later time designated by a specific date or the happening of an event that is certain to occur). In the early case of State ex rel. Pearman v. Liedtke, 9 Neb. 490, 497, 4 N.W. 75, 80 (1880), the Nebraska Supreme Court stated that "{i}t was competent for the Legislature to pass an act depending for its execution, either in whole or in part, upon the happening of. . . a contingency," The court continued, however, by stating that "such an act is not to be confounded with those acts of legislation which have generally been held void by reason of their being made to depend for their vitality upon their ratification by the voters at a popular election." Id.

While it is generally proper for a legislative body to enact legislation which is to become operative upon the occurrence of a future event, an exception to this general rule is recognized where the effectiveness of legislation is made to depend upon the approval of the voters at a general election. Under the majority view, the Legislature may not, in the absence of constitutional authorization, delegate its legislative power by submitting to the voters of the entire state the question of whether an act shall become a law. E.g., In re Opinions of the Justices, 232 Ala. 56, 166 So. 706 (1936); People ex rel. Thomson v. Barnett, 344 Ill. 62, 176 N.E. 108 (1931); Barto v. Himrod, 8 N.Y. 483 (1853). See generally Annot., 76 A.L.R. 1053, 1054-58 (1932); 16 C.J.S. Constitutional Law §§ 137, 166-167 (1984). A minority of jurisdictions, however, hold that the Legislature may leave the determination of whether or not a statute is to take effect to a vote of the people of the state. E.g., State ex rel. Broughton v. Zimmerman, 261 Wis. 398, 52 N.W.2d 903 (1952); State v. Parker, 26 Vt. 357 (1854). See generally Annot., 76 A.L.R. 1053, supra, at 1058-1062.¹

In State ex rel. Pearman v. Liedtke, supra, the Nebraska Supreme Court impliedly indicated its acceptance of the majority view by recognizing the proposition that an act of legislation, the vitality of which is dependent upon "ratification by the voters at a popular election," is invalid. 9 Neb. at 497, 4 N.W. at 80. Indeed, we specifically noted the import of this language in a prior opinion in which we concluded, in part, that proposed legislation which was to become operative upon the adoption of a constitutional amendment would likely be held to represent "an unlawful attempt to delegate legislative power from the Legislature to the electorate, contrary to Article III, Section 1 of the Nebraska Constitution." Report of Attorney General 1965-66, Opinion No. 61, p. 89. In reaching this conclusion, we stated that, "{e}ven though the electorate would not be voting directly upon the question of enacting {the} statutes, in effect the electorate (rather than the Legislature) would be exercising its judgment as to the expediency of the law just as certainly as though they were voting upon the statutes directly." Id. at 90.²

As noted previously, LB 1063 contains provisions establishing two alternative means for the taxation of tangible personal property (other than motor vehicles), the operation of which will depend upon the adoption of "a constitutional amendment amending Article VIII of the Constitution of Nebraska" in 1992. Generally, if a constitutional amendment is not adopted, the bill provides that all tangible personal property (other than specified exempt property) shall be taxed at its actual value. LB 1063, §§ 52 and 53. Alternatively, if a constitutional amendment is adopted, tangible personal property which constitutes "depreciable tangible personal property" will be taxed at its "net book

value," as defined in the bill, and other tangible personal property will be exempted from taxation. LB 1063, §§ 47-48, 52-53.

Unlike those situations where the operation and effect of legislation is made to be contingent upon the occurrence of a future event (including a vote of the people), LB 1063 does not provide that the bill itself will be operative and effective only upon the occurrence of such a contingency. The particular sections of the bill noted above are operative as of January 1, 1992 (LB 1063, § 210), and the bill, having been passed with the emergency clause and signed by the Governor, is presently in effect. LB 1063, § 215. Thus, while the bill itself is plainly in effect, and its provisions are either presently operative (or will become operative) as specified in section 210 of the bill, the manner in which various provisions relating to property taxation will actually operate is contingent upon whether an amendment to Article VIII of the Nebraska Constitution is adopted in 1992. In essence, as outlined above, the bill proposes two alternative means by which tangible personal property may be taxed, with the choice of which alternative is to be given effect made to depend upon whether the voters approve or reject an amendment to Article VIII of the Nebraska Constitution. Thus, while the bill by its terms appears to be complete and not dependent upon electoral approval in order for its provisions to be operative and effective, a question nevertheless exists as to whether the establishment of such alternative provisions creates an unconstitutional delegation of legislative power to the people, as the choice of which alternative is to be applied is dependent upon the results of a vote of the electorate to amend the Nebraska Constitution.³

In assessing whether LB 1063 potentially establishes an unconstitutional delegation of legislative power to the electorate, however, it is necessary to consider as well the provisions of LR 219CA, the proposed constitutional amendment to Article VIII, Sections 1, 2 and 5 of the Nebraska Constitution. In addition to amending these existing sections of Article VIII, LR 219CA proposes to add a new Section 13 to this article. This section would provide as follows:

Notwithstanding Article I, section 16, Article III, section 18, or Article VIII, section 1 or 4, of this Constitution or any other provision of this Constitution to the contrary, amendments to Article VIII of this Constitution passed in 1992 shall be effective from and after January 1, 1992, and existing revenue laws and legislative acts passed in the regular legislative session of 1992, not inconsistent with this Constitution as amended, shall be considered ratified and confirmed by such amendments without the need for legislative reenactment of such laws. (Emphasis added).

Pursuant to this broad language, providing that, "{n}otwithstanding. . .any . . .provision of this Constitution to the contrary," amendments

to Article VIII "passed in 1992 shall be effective from and after January 1, 1992," and providing that existing revenue laws and legislation passed in the regular 1992 legislative session "not inconsistent with this Constitution as amended" are "ratified and confirmed. . .without the need for legislative reenactment," it could be argued that, by virtue of these terms, adoption of the amendment would foreclose a constitutional attack on the validity of LB 1063 based on any provision of the Nebraska Constitution. This could include a challenge based on alleged improper delegation of legislative power to the electorate, as such would be based on Article III, Section 1, of the Nebraska Constitution. In our view, however, it is not clear that the above-quoted language would, if such a challenge were made, be construed to eliminate any constitutional objection on this basis.

II. RATIFICATION AND CONFIRMATION OF UNCONSTITUTIONAL LEGISLATION BY SUBSEQUENT CONSTITUTIONAL AMENDMENT.

An additional question raised by your request is whether, if LB 1063 was unconstitutional when enacted, the bill may be validated by the adoption of LR 219CA.

Initially, we note that your request includes the statement that LB 1063 "contains provisions related to the taxation of personal property which would clearly be unconstitutional if they were made operative under our present constitution." As stated previously, however, the personal property tax provisions to which you refer (i.e., those providing for the taxation of only "depreciable tangible personal property" at its "net book value") become operative under the bill only if an amendment to Article VIII of the Constitution is adopted in 1992 which would allow the taxation of personal property in this manner. Thus, it is not accurate to state that the bill's provisions relating to the taxation of tangible personal property are unconstitutional because they mandate the taxation of personal property in a manner contrary to the present Constitution. Nevertheless, the question remains as to whether, if the property tax provisions of LB 1063 are unconstitutional for the reason articulated in part I, supra, of this opinion, the bill may be successfully defended against a constitutional challenge if LR 219CA is adopted, by virtue of the express ratification clause contained in the constitutional amendment.

It is well-established that an unconstitutional statute is wholly void from the time of its enactment and is not validated by a subsequent constitutional change which would allow enactment of such a statute. E.g., Fellows v. Shultz, 81 N.M. 496, 469 P.2d 141 (1970); Mathews v. Quinton, 367 P.2d 932, (Alaska 1961); Banaz v. Smith, 133 Cal. 102, 65 P. 309 (1901). See generally Annot., 171 A.L.R. 1070, 1070-1072 (1947); 16 C.J.S. Constitutional Law § 44 (1984); 16 Am.Jur.2d Constitutional Law § 259 (1979). The Nebraska Supreme

Court has followed this general principle, holding that "an act of the Legislature that is forbidden by the Constitution at the time of its passage is absolutely null and void, and is not validated by a subsequent amendment to the Constitution authorizing it to pass such an act." Whetstone v. Slonaker, 110 Neb. 343, 344, 193 N.W. 749, 749 (1923) (syllabus of the court). Accord State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

An exception to this general rule is recognized, however, where a constitutional amendment expressly or impliedly ratifies or confirms an unconstitutional statute. Under these circumstances, such ratification renders valid antecedent unconstitutional legislation, without reenactment by the legislature, unless such attempted validation would impair the obligation of contracts or divest vested rights. E.g., Bonds v. State Dept. of Revenue, 254 Ala. 553, 49 So.2d 280 (1950); Peck v. City of New Orleans, 199 La. 76, 5 So.2d 508 (1941); Peck v. Tugwell, 199 La. 125, 5 So.2d 524 (1941). See Generally Annot., 171 A.L.R. 1070, 1072-1074 (1947); 16 C.J.S. Constitutional Law § 44 (1984); 16 Am.Jur.2d Constitutional Law § 259 (1979).

In a previous opinion (discussed in Part I, supra), we concluded that legislation designed to become operative upon the adoption of a subsequent constitutional amendment would "rest upon infirm constitutional footing, on the ground that a statute which is contrary to the Constitution when enacted cannot be revitalized by a subsequent constitutional amendment," Report of Attorney General 1965-66, Opinion No. 61, p. 89, 91. Discussing the principle articulated by the Nebraska Supreme Court in Whetstone v. Slonaker, supra, that an act contrary to the Constitution when enacted is void from its enactment and is not validated by a later amendment to the Constitution authorizing its passage, we stated the following:

True, apparently the constitutional amendment involved in the Whetstone case contained no express provision purporting to ratify or confirm the statute in question. However, the Nebraska court has been so emphatic in its pronouncements to the effect that a statute which is contrary to the form of the Constitution when enacted is, for all purposes absolutely null and void and is as though the statute had never been passed in the first instance, that we are inclined to believe that the court would adopt the view that a statute which is in its terms contrary to the Constitution at the time of passage can never be validated by any constitutional amendment, even though such amendment might contain a ratification clause.

Report of Attorney General 1965-66, Opinion No. 61, supra, at 91.

In spite of the conclusion reached in this prior opinion, we cannot definitively conclude that our state supreme court would not give effect to the express ratification clause contained in LR 219CA in the event of a challenge to the constitutionality of LB 1063. A substantial body

of authority exists which recognizes the effectiveness of express ratification clauses validating prior unconstitutional legislation as part of subsequent constitutional amendments. Indeed, as a matter of policy, it would appear that the better view would be to recognize and allow the express ratification and confirmation provision contained in LR 219CA, in order to effectuate the intent of the people should they vote to adopt this amendment to the Constitution, to retroactively give effect to legislation enacted during the 1992 regular legislative session, including LB 1063.⁴

The difficulty in this case, however, arises by virtue of the fact that the potential constitutional defect noted in Part I. of this opinion involves whether the provisions of LB 1063 relating to property taxation may be unconstitutional as delegating legislative power to the electorate, in view of the alternative provisions established under the bill, the operation of which depend upon whether the people vote to amend Article VIII of the Constitution. If, for the reasons previously stated, LB 1063 were found to contain an unconstitutional delegation of legislative authority in this manner, it would be difficult to contend that the ratification provision of LR 219CA should be interpreted to validate such a defect, as the basis of unconstitutionality would be the very act of conditioning the manner of operation of these portions of the bill upon a vote of the electorate. We have not, however, concluded that the bill is necessarily unconstitutional as providing for an impermissible delegation of legislative power, in view of the language of LR 219CA providing that, "{n}otwithstanding. . .any. . .provision of this Constitution to the contrary," the amendments to Article VIII are deemed effective as of January 1, 1992. To the extent the ratification clause could be construed to validate any additional constitutional objections to LB 1063, we believe a reasonable argument could be advanced to sustain the effectiveness of this aspect of the constitutional amendment.

III. CONCLUSION

In light of the foregoing discussion, we conclude that, for the reasons outlined above, there are potential constitutional infirmities associated with the provisions of LB 1063. Specifically, a question exists as to whether the "alternative" provisions relating to property taxation, which seek to condition the manner in which tangible personal property is to be taxed on whether a constitutional amendment is adopted, may be held to establish an unconstitutional delegation of legislative authority to the electorate. In addition, while LR 219CA contains an express ratification clause purporting to validate legislation enacted during the 1992 regular legislative session, there is no guarantee that our state supreme court would uphold the effectiveness of such an attempt to revitalize LB 1063, should it be determined that the statute was contrary to the Constitution when enacted.

For these reasons it is our strong recommendation that if LR 219CA is approved by the voters, that the Legislature reconvene for the purpose of re-enacting LB 1063 or its equivalent. Any other course of action would be nothing more than a legal gamble, which if lost, could have very serious consequences for the people of Nebraska.

In making this recommendation, we are not saying that the provisions of LB 1063 are plainly unconstitutional. In the event the voters approve Amendment 1, we would certainly defend the bill against any challenge to its constitutionality. However, the prudent course of action would be for the Legislature to be convened in special session, should the electorate adopt Amendment 1, to permit the reenactment of LB 1063 or its equivalent. We strongly recommend that such action be taken.

¹ Generally, while it is held that, in the absence of constitutional authorization, the Legislature may not submit to the voters of the state the question of the adoption of a law, it may make the local application of a complete general law subject to local approval, or may make the operation of a special local law dependent upon approval of the voters of the locality in which the statute is to operate. 16 C.J.S. Constitutional Law § 167 (1984). In the instant case, of course, no such issue of local application of a general law, subject to voter approval, is raised.

² We also note that, on prior occasions, we have determined that the Legislature may not invoke the constitutional provisions relating to the powers of initiative and referendum to place questions relative to the adoption or referral of legislation before the electorate, as the Constitution limits the invocation of these powers to "the people" by a petition process. Attorney General Opinion No. 92056, April 6, 1992; Attorney General Opinion No. 21, February 13, 1979.

³ We recognize that the United States Supreme Court has held that a referendum does not involve a delegation of legislative power. City of Eastlake v. Forrest City Enterprises, Inc., 426 U.S. 668 (1976). This holding is of no consequence, however, as the instant situation does not involve any effort by the Legislature to refer legislation to a vote of the electorate, even if the Legislature possessed the power to do so.

⁴ The Nebraska Supreme Court has recognized that, while a constitutional amendment operates prospectively only, it may be given retrospective effect where the language employed expresses a clear intent for the amendment to operate retroactively. Luikert v. Higgins, 130 Neb. 395, 264 N.W. 903 (1936).

Very truly yours,
DON STENBERG
Attorney General

(Signed) L. Jay Bartel
Assistant Attorney General

cc: Patrick O'Donnell
Clerk of the Legislature

Opinion No. 92071

DATE: May 21, 1992

SUBJECT: Reenactment of LB 1063

REQUESTED BY: Senator Rex Haberman
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
L. Jay Bartel, Assistant Attorney General

In light of the conclusions reached in Attorney General Opinion No. 92064, April 27, 1992, you have requested our opinion regarding whether, should the Legislature be convened in special session for the purpose of reenacting LB 1063 or similar legislation following voter approval of LR 219CA, it would be necessary to reenact LB 1063 (or its equivalent) in its entirety.

Previously, we concluded that potential constitutional infirmities existed with respect to certain provisions of LB 1063. Specifically, we noted that a question existed as to whether the "alternative" provisions relating to the taxation of tangible personal property in 1992, conditioning the manner in which tangible personal property is to be taxed on whether an amendment to Article VIII of the Nebraska Constitution was adopted, could be held to establish an unconstitutional delegation of legislative authority to the electorate. Attorney General Opinion No. 92064, at 9-10. In addition, we determined that, while LR 219CA contained an express ratification clause purporting to validate legislation enacted during the 1992 regular legislative session, there was no guarantee that the courts would uphold the effectiveness of such an attempt to revitalize LB 1063, should it be determined that the statute was contrary to the Constitution when enacted. *Id.* at 10.

Should the Legislature be convened in special session to consider addressing the potential constitutional defects associated with LB 1063 noted in our prior opinion, it could be argued that enacting legislation which eliminates the conditional provisions relating to property taxation may be sufficient to remedy the possible improper delegation of

legislative authority contained in certain portions of the bill. We are concerned, however, that the "nonseverability" provision contained in § 211 of LB 1063 could, in the event of a constitutional challenge based on the alleged invalidity of the act when passed, lead to a declaration that those portions of the bill not replaced by new legislation enacted at a special session are unconstitutional.

Rather than adopting such a limited approach, it would appear prudent for the Legislature to reconsider the act in its entirety, and to reenact appropriate legislation addressing the constitutional concerns outlined previously as part of a complete act encompassing all provisions of LB 1063. Reconsideration and reenactment of the bill (or similar legislation) in its entirety, incorporating such changes as are necessary to remedy these potential infirmities, presents the safest and soundest approach should the Legislature be convened to address this subject.

We note that the Governor has not yet issued a proclamation calling the Legislature into special session pursuant to Article IV, Section 8 of the Nebraska Constitution, which provides:

The Governor may, on extraordinary occasions, convene the Legislature by proclamation, stating therein the purpose for which they are convened, and the Legislature shall enter upon no business except that for which they were called together.

The last portion of this constitutional provision places an express limitation on the power of the Legislature to act during a special session. In Arrow Club, Inc. v. Nebraska Liquor Control Commission, 177 Neb. 686, 689, 131 N.W.2d 134, 137 (1964), the court, discussing the nature of this limitation, stated:

It is well established that the Legislature while in special session can transact no business except that for which it was called together. Chicago, B. & Q. R.R. Co. v. Wolfe, 61 Neb. 507, 86 N.W. 441. The proclamation may state the purpose for which the Legislature is convened in broad, general terms or it may limit the consideration to a specified phase of a general subject. The Legislature is free to determine in what manner the purpose shall be accomplished, but it must confine itself to the matters submitted to it by the proclamation.

Thus, the scope of the Legislature's authority to act during a special session is confined to the subject matter expressed in the Governor's proclamation. As no proclamation has been issued at the present time, we cannot advise you as to whether either of the options previously discussed (i.e., reenacting LB 1063 in whole or in part), would fall within the purview of any call which the Governor may eventually issue relating to this subject.

Very truly yours,

DON STENBERG
Attorney General
(Signed) L. Jay Bartel
Assistant Attorney General

cc: Patrick O'Donnell
Clerk of Legislature
7-372-7.13

Opinion No. 92078

DATE: June 3, 1992

SUBJECT: The Constitutionality of LB 396, the "Hate Crimes Bill"

REQUESTED BY: Senator Brad Ashford, District #6

WRITTEN BY: Don Stenberg, Attorney General
Steve Grasz, Deputy Attorney General

You have requested an attorney general's opinion regarding the constitutionality of LB 396, the Hate Crimes bill you originally introduced in January 1991, and which you plan to introduce once again in the next legislative session.

LB 396 prohibits "institutional vandalism" and "ethnic intimidation," provides criminal penalties and authorizes a civil action for violations of such offenses, and requires the Nebraska State Patrol to maintain information on crimes motivated by bigotry and bias. LB 396 provides, in part,

Section 1. (1) A person commits the crime of institutional vandalism by knowingly vandalizing, defacing, or otherwise damaging:

(a) Any church, synagogue, or other building, structure, or place used for religious worship or other religious purposes;

(b) Any cemetery, mortuary, or other facility used for the purpose of burial or memorializing the dead;

(c) Any school, educational facility, or community center;

(d) The grounds adjacent to and owned or rented in connection with any institution, facility, building, structure, or place described in this subsection; or

(e) Any personal property contained in any institution, facility, building, structure, or place described in this subsection.

(2) Institutional vandalism shall be a:

(a) Class II misdemeanor if the person causes damage to or loss of the property of another in an amount of one hundred dollars or less or if the person causes no pecuniary loss;

(b) Class I misdemeanor if the person causes damage to or loss of the property of another in an amount in excess of one hundred dollars; and

(c) Class III felony if the person causes damage to or loss of the property of another in an amount in excess of three hundred dollars.

In determining the amount of damage to or loss of property, the amount shall include the cost of repair or replacement of the property that was damaged or lost.

Section 2. (1) A person commits the crime of ethnic intimidation if, by reason of the actual or perceived race, color, religion, national origin, or sexual orientation of another individual or group of individuals, he or she commits assault as defined in sections 28-308 to 28-310, criminal mischief as defined in section 28-519, criminal trespass as defined in section 28-520, or disturbing the peace as defined in section 28-1322.

(2) Ethnic intimidation shall be classified one offense higher than the underlying offense on which the crime is based.

I. Standard of Review

Although a duly enacted statute normally carries with it a presumption of constitutionality, State ex rel. Wright v. Pepperl, 221 Neb. 664, 671, 380 N.W.2d 259 (1986), when a statute allegedly infringes on the exercise of First Amendment rights, the presumption is to the contrary and the burden of proof is shifted. The statute's proponent bears the burden of establishing by competent evidence the statute's constitutionality. ACORN v. City of Frontenac, 714 F.2d 813, 817 (8th Cir. 1983). See also Goward v. City of Minneapolis, 456 N.W.2d 460, 464 (Minn. 1990) ("The ordinary presumption of constitutionality afforded legislative enactments does not apply to laws restricting first amendment rights.") (citing Meyer v. Grant, 486 U.S. 414, 426 (1988)). However, in State v. Mitchell, 473 N.W.2d 1, 3 (Wis.App. 1991), review granted, 475 N.W.2d 164, the court acknowledged this rule, yet imposed the burden of proof on the defendant rather than the state, and found Wisconsin's hate crime statute was not vague or overbroad.

II. Analysis

A. Section One

We see no constitutional problems with Section 1 of LB 396 (institutional vandalism).

B. Section Two

Statutory provisions similar to Section 2 (ethnic intimidation) have been subject to constitutional challenge in other states. Therefore, we will set forth a detailed analysis of this section.

Section 2 of LB 396 provides increased penalties for assault, criminal mischief, criminal trespass and disturbing the peace where such crimes are motivated by reason of the actual or perceived race,

color, religion, national origin or sexual orientation of another individual or group of individuals. We will review this section under the constitutional law doctrines of vagueness and overbreadth.

1. Vagueness

A fundamental requirement of a statute is that it not be vague and uncertain. See Neeman v. Nebraska Natural Resources Commission, 191 Neb. 672, 217 N.W.2d 166 (1974). The void for vagueness doctrine is based on the due process requirements contained in the Fifth and Fourteenth Amendments to the federal constitution, and contained in Article I, section 3 of our Nebraska Constitution. U.S. v. Articles of Drug, 825 F.2d 1238 (8th Cir. 1987); In Interest of D.L.H., 198 Neb. 444, 253 N.W.2d 283 (1977). In order to pass constitutional muster, a statute must be sufficiently specific so that persons of ordinary intelligence must not have to guess at its meaning, and the statute must contain ascertainable standards by which it may be applied. Id. See also State v. Adkins, 196 Neb. 76, 80, 241 N.W.2d 655 (1976).

In State ex rel. Douglas v. Herrington, 206 Neb. 516, 294 N.W.2d 330 (1980), the court said that the established test for vagueness in a statute is whether it either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. See also State v. Hamilton, 215 Neb. 694, 340 N.W.2d 397 (1983).

The dividing line between what is lawful and unlawful cannot be left to conjecture, and a citizen cannot be held to answer to charges based upon penal statutes whose mandates are so uncertain that they will reasonably admit of different constructions. A penal statute must express the crime and the elements constituting it so clearly that an ordinary person can intelligently choose in advance what course is lawful for him to pursue. Id. See also State, Dept. of Roads v. Mayhew Products Corp., 211 Neb. 300, 304-05, 318 N.W.2d 280 (1982).

The constitutional prohibition against undue vagueness does not invalidate every statute which a reviewing court might believe could have been drafted with greater precision; all that due process requires is that a statute give sufficient warning that men may conform their conduct so as to avoid that which is forbidden. State v. Robinson, 202 Neb. 210, 274 N.W.2d 553 (1979), cert. denied, 444 U.S. 865.

Section 2 of LB 396 makes "sexual orientation" a protected class of equal status with race, color, religion and national origin for purposes of protection from "ethnic intimidation." While we assume the intent of LB 396 is to make homosexuals a protected class, the term "sexual orientation" leaves room for potential challenge on the basis of vagueness. This term could conceivably include all "orientations" of a sexual nature (bigamy, pedophilia, etc.). It is true that the constitutional

requirement of reasonable certainty in statutory language is satisfied by the use of ordinary terms which find adequate interpretation in common usage and understanding. Fulmer v. Jensen, 221 Neb. 582, 379 N.W.2d 736 (1986). Statutes are sufficiently definite when they use language which is commonly grasped. In Re Interest of Metteer, 203 Neb. 515, 279 N.W.2d 374 (1979). However, you may want to avoid potential challenges by making the proposed language more precise.¹

2. Overbreadth

A second issue is whether portions of LB 396 are unconstitutionally overbroad. "An attack based on the overbreadth of a statute asserts that the questioned language impermissibly infringes on some constitutionally protected right." State v. Two IGT Video Poker Games, 237 Neb. 145, 148, 465 N.W.2d 453 (1991). However, the Nebraska Supreme Court has held that "a statute may be unconstitutionally overbroad on its face only if its overbreadth is substantial, that is, when the statute would be unconstitutional in a substantial portion of the situations to which it is applicable." Id. See also Doe v. University of Michigan, 721 F.Supp. 852, 864 (E.D. Mich. 1989) ("[T]he state may not prohibit broad classes of speech, some of which may indeed be legitimately regulable, if in so doing a substantial amount of constitutionally protected conduct is also prohibited.").

Under this formulation of overbreadth analysis, the first question is whether conduct punishable under LB 396 is protected by the First Amendment. This would appear to be an issue only with respect to that portion of Section 2 which provides increased penalties for the crime of disturbing the peace committed by reason of race, color, religion, national origin or sexual orientation. The question of overbreadth could arise in the context of cross burnings which are prosecuted as disturbances of the peace instead of, or in addition to, being prosecuted as acts of criminal trespass or other crimes.

Cross Burning

The hateful activity most often associated with hate crimes statutes is cross burning. Cross burning may, under some circumstances, constitute "speech" for purposes of First Amendment analysis.

The First Amendment literally forbids the abridgement only of "speech," but we have long recognized that its protection does not end at the spoken or written word. . . . {W}e have acknowledged that conduct may be "sufficiently inbred with elements of communication to fall within the scope of the First and Fourteenth Amendments."

Texas v. Johnson, 491 U.S. 397, 109 S.Ct. 2533, 2539 (1989) (holding that flag burning was protected speech under the circumstances of the case).

However, cross burning in the context of ethnic intimidation, as defined by LB 396, may not enjoy First Amendment protection. As the United States Supreme Court has long held,

it is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or "fighting" words - those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.

Chaplinsky v. New Hampshire, 315 U.S. 568, 571-572 (1941) (emphasis added); U.S. v. Eichman, 496 U.S. 310, 110 S.Ct. 2404, 2407 (1990) (fighting words do not enjoy the full protection of the First Amendment); State v. Broadstone, 233 Neb. 595, 447 N.W.2d 30, 34 (1989) (fighting words are not constitutionally protected speech and may be punished as a breach of peace under Neb.Rev.Stat. §28-1322); Attorney General Opinion No. 86030, dated March 7, 1986 (fighting words do not fall within protection of First Amendment).

The Eighth Circuit Court of Appeals has stated, with respect to a particular cross burning incident, "we proceed on a predicate that cross burning is conduct which possesses sufficient elements of communication to implicate the first amendment. However, it does not necessarily follow that the burning of this cross was protected first amendment activity." U.S. v. Lee, 935 F.2d 952, 954 (8th Cir. 1991) (opinion and judgment vacated as to count 1, August 14, 1991). "Although persons must generally tolerate highly offensive and disturbing speech, the government may restrict such speech where it intrudes on the privacy of the home or where the degree of captivity makes it impractical for an unwilling listener or viewer to avoid exposure to the speech." Id. at 956.

The United States Supreme Court in Texas v. Johnson found that the burning of an American flag under the circumstances of that case did not constitute fighting words, Texas v. Johnson, 109 S.Ct. at 2542, because "no reasonable onlooker would have regarded Johnson's generalized expression of dissatisfaction with the Federal Government as a direct personal insult or invitation to exchange fisticuffs." Id. In contrast, LB 396 deals with cross burnings only in the context of crimes against individuals or a group of individuals. This is an important distinction. LB 396 is not as broad in its application as the hate crimes ordinance currently before the U.S. Supreme Court. In Matter of Welfare of R.A.V., 464 N.W.2d 507 (Minn. 1991), the Court has granted certiorari to decide whether a St. Paul, Minnesota city ordinance is unconstitutionally overbroad. That ordinance provides:

{w}hoever places on public or private property a symbol, object, appellation, characterization or graffiti, including but not limited to, a burning cross or Nazi swastika, which one knows arouses anger, alarm, or resentment in others on the basis of race, color, creed, religion, or gender commits disorderly conduct and shall be guilty of a misdemeanor.

The Minnesota Supreme Court held the ordinance was not overbroad as it is "reasonably subject to an interpretation limiting its scope" to conduct likely to provoke imminent lawless action (fighting words). Matter of Welfare of R.A.V., 464 N.W.2d at 510. See U.S. v. Hayward, 767 F.Supp. 928, 929 (N.D.Ill. 1991) ("While the Supreme Court has granted certiorari in R.A.V. v. St. Paul, Minnesota, ___ U.S. ___, 111 S.Ct. 2795, 115 L.Ed. 2d 969 (1991), a determination that the ordinance at issue in that case is overbroad will not necessarily decide . . . that cross-burning is constitutionally protected activity. {A defendant} would still be required to show that his cross-burning was expressive conduct."). It does not appear to be illegal, under LB 396, to burn a cross on one's own private property or in a public forum as a general form of expression (repugnant though these acts may be). Furthermore, a statute similar to LB 396 was upheld in State v. Mitchell, 473 N.W.2d 1 (Wis.App. 1991), when challenged as vague and overbroad.

The only potential infirmity we foresee would arise if conduct proscribed by LB 396 was prosecuted as "disturbing the peace" and such conduct would not fall under the parameters of fighting words.² If challenged on this basis, we believe a court would judicially narrow the statute to exclude such conduct.

In Attorney General Opinion No. 253, dated March 14, 1980, it was stated, with respect to a proposed criminal statute concerning "disturbing the peace" that "in light of the specificity required by the Supreme Court in State v. Coomes {170 Neb. 298, 102 N.W.2d 454 (1960)} {with respect to the crime of disturbing the peace under Nebraska law}," the statute would be upheld against an overbreadth challenge. "We also believe that should the statute come before our Supreme Court, our court, would adopt those limiting constructions heretofore approved by the United States Supreme Court in cases such as Cox v. Louisiana, 379 U.S. 536 {1965}." This opinion also noted that "In Lewis v. New Orleans, 415 U.S. 130 {1974}, the Supreme Court limited a breach of the peace complaint to one involving fighting words rather than just words." See also State v. Moore, 226 Neb. 347, 352, 411 N.W.2d 345 (1987).

It must be noted, however, that the Nebraska Supreme Court will not judicially narrow an overbroad statute under all circumstances. "A court cannot under the guise of its powers of construction, rewrite a statute, supply omissions or make other changes." State v. Adkins, 196

Neb. 76, 85 (1976), Clinton, J., (responding to the dissent). Therefore, we recommend you consider avoiding possible court challenges by either removing the offense of disturbing the peace from the parameters of ethnic intimidation or by drawing LB 396 more narrowly so as to make it clear that only fighting words, and not First Amendment speech, fall within the reach of its criminal penalties.

C. Sections Three through Seven

We see no constitutional problems with sections 3 through 7. We would observe that sections 4 and 5 create unlimited liability on the part of parents for damage or loss suffered as a result of crimes committed pursuant to sections 1 and 2 by unemancipated minors. Such liability is in derogation of common law, and this provision would be strictly construed by the courts. With respect to section 6, we recommend the terms "bigotry" and "bias" be defined to provide guidance to the State Patrol, as bigotry and bias can refer to any strongly held belief or opinion.

¹ This opinion is in no way intended to endorse the concept of making "sexual orientation" a protected class of the same status as gender, race or religion. This is a policy matter for the Legislature to address.

² This same overbreadth problem could occur with respect to other "speech" besides cross burnings. If a citizen was charged under LB 396 with "ethnic intimidation" for standing in a public park or sidewalk and loudly proclaiming his or her views on homosexuality or religion, a court would likely find the statute overbroad or would judicially narrow its application so as not to punish such speech.

Sincerely yours,
DON STENBERG
Attorney General
(Signed) Steve Grasz
Deputy Attorney General

3-732-3

Opinion No. 92088

DATE: June 26, 1992

SUBJECT: Neb.Rev.Stat. § 23-269; When does a redistricting plan for county supervisors take effect?

REQUESTED BY: Senator George Coordsen, Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

Some Nebraska counties have adopted a township form of government under the provisions of Neb.Rev.Stat. §§ 23-201 et seq. (Reissue 1991) which involves a Board of County Supervisors elected by supervisor districts rather than a Board of County Commissioners. Under Section 23-269, the county supervisors in a township organization have a mandatory duty to redistrict and change the boundaries of county supervisor districts when the state and federal census indicates that the population among the several districts in the county has become unequal. State ex rel. Rowe v. Emanuel, 142 Neb. 583, 7 N.W.2d 156 (1942). See Neb.Rev.Stat. §32-1057 (Supp. 1991). In your opinion request, you indicate that a question has arisen as to when the county supervisors in a particular county start representing their new districts after a redistricting realignment: "{i}s it immediately after the redistricting (January 1992) or after the next election of the supervisors (November 1994 for the term commencing in January 1995)?" You also indicate that the purpose of your opinion request is to determine whether it is necessary to introduce "clarifying legislation" as to when the supervisors commence representing their new districts. While there do not appear to be any statutes directly on point concerning your question, there is at least some authority for the proposition that county supervisors begin representing their new districts immediately upon passage of the redistricting resolution. Whether that situation warrants "clarifying legislation" is, of course, for you to decide.

Section 23-268 provides that county supervisors in a township form of county government shall hold office for a term of four years, and until a successor is elected and qualified. That statute also provides that a supervisor must generally reside in the district in which he or she holds office. Section 23-269, the section at issue dealing with redistricting, states, in relevant part:

The supervisor districts may be changed after each state and federal census if it appears from an examination that the population has become unequal among the several districts....Those counties under township organization may change their procedures for electing members to their governing board to at large or from at large to district following the provisions of section 32-1058.

There do not appear to be any Nebraska statutes which specifically set out when the changes brought about by a redistricting of county supervisor districts take effect. Nor are there any Nebraska cases which deal specifically with that issue. However, in State ex rel. Connolly v. Haverly, 62 Neb. 767, 87 N.W. 959 (1901), the Nebraska Supreme

Court indicated that alterations in district boundary lines as a result of redistricting did not have the effect of depriving a county commissioner then holding office from exercising his duties for the full term for which he was elected even though the change in district boundary lines as a result of redistricting placed that commissioner in a different district. The commissioner continued to represent his original numbered district albeit he was a resident of another district as a result of redistricting. While the Haverly case concerned county commissioners, we believe the same analysis can be made for county supervisors. Therefore, when redistricting occurs, county supervisors serving the remainder of their term continue to serve and to represent their same numbered district as before. We earlier said as much in Report of the Attorney General, 1963-1964, No. 186 at 319.

As a result, if a county supervisor served Supervisor District No. 1 prior to redistricting, he or she would continue to serve District No. 1 after redistricting, assuming there is time remaining in his or her term of office, and assuming that the office is not somehow otherwise vacated. While this result seems clear, you have asked the additional question of when does the supervisor representing District No. 1 begin to represent any new or different geographic portions of his or her district. There is some indication that the county redistricting plan goes into effect immediately upon passage of the redistricting resolution.

As we indicated previously, there are no Nebraska statutes or cases which deal specifically with this issue. However, there is authority which indicates that, absent contrary statutory provisions, legislative acts or orders of a county board generally are effective as soon as they become law. 20 C.J.S. Counties §93. Consequently, since there do not appear to be contrary statutes with respect to the question you raised, we believe that a redistricting plan for county supervisors would become effective upon proper passage of a redistricting resolution by the county board of supervisors. In the example we gave earlier, the county supervisor representing District No. 1 would begin representing the altered district upon passage of the redistricting resolution.

You posed your opinion request for the purpose of determining whether further legislation in this area is necessary. Obviously, since there are no statutes which require the result set out above, you may wish to make that result more certain by proposing legislation. Alternatively, if you wish a contrary result, further legislation might also be advisable.

Sincerely yours,
DON STENBERG
Attorney General
Dale A. Comer
Assistant Attorney General

(Signed)

cc: Patrick J. O'Donnell
Clerk of the Legislature

Opinion No. 92096

DATE: July 30, 1992

SUBJECT: Questions Involving Legislative Redistricting in
Light of Day v. Nelson, 240 Neb. 997, ____
N.W.2d ____ (1992)

REQUESTED BY: Senator Owen Elmer
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

On July 2, 1992, the Nebraska Supreme Court issued its opinion in Day et al. v. Nelson et al., 240 Neb. 997, -- N.W.2d -- (1992). In that opinion, the court held that Sections 5-219 and 5-241 of LB 614, the state's 1991 legislative redistricting bill, were unconstitutional under Article III, Section 5 of the Nebraska Constitution. As a result, the court required that enforcement of those sections of the bill be enjoined. You have now asked us several questions relating to the further legislative redistricting which must be accomplished in light of the Day decision. Our views are set out below.

The plaintiffs in the Day case were all residents of Madison County, Nebraska, who believed that Madison County had been treated improperly under the provisions of LB 614. In particular, the plaintiffs were concerned that Madison County was split among two new legislative districts under LB 614, since Madison County had, for some time, constituted one legislative district with its own legislator. Based upon the results of the 1990 Federal Census, it was also clear that Madison County closely approximated the ideal size of a legislative district when the requirements of numerical equality among legislative districts were considered, and that Madison County, along with Lincoln County, fit within the parameters of the ideal district size established by the legislative committee studying redistricting. As a result, the plaintiffs contended that the provisions of LB 614 which dealt with Madison County violated Article III, Section 5 of the Nebraska Constitution which provides, in pertinent part:

At the regular session of the Legislature held in the year nineteen hundred and thirty-five the Legislature shall by law determine the number of members to be elected and divide the state into legislative districts. In the creation of such districts, any county that

contains population sufficient to entitle it to two or more members of the Legislature shall be divided into separate and distinct legislative districts, as nearly equal in population as may be and composed of contiguous and compact territory. . . . The Legislature shall redistrict the state after each federal decennial census. In any such redistricting, county lines shall be followed whenever practicable, but other established lines may be followed at the discretion of the Legislature.

The court's opinion in the Day case is very brief, and the holding of the case is contained in two paragraphs at the end of the opinion:

As stated above, the only counties in this state where a single legislative district could lawfully follow the entire county boundaries are Lincoln County and Madison County. It is obvious that according to the plain language of article III, § 5, Madison County must constitute a single district unless not "practicable." It is also obvious that the presence of a number of proposed plans that apportion the state leaving District 21 substantially intact makes following that county's boundaries "practicable." . . .

Since it was practicable to follow the county lines of Madison County and the Legislature failed to do so, it follows that §§ 5-219 and 5-241 of L.B. 614 violate article III, § 5, and the appellees should be enjoined.

Day v. Nelson, 240 Neb. 1000, 1001. Consequently, the Day opinion gives little guidance as to the reasoning underlying the court's decision, and it is most difficult to ascertain what the court might do with any other application of Article III, Section 5 beyond the narrow fact situation specifically at issue in the case. Nevertheless, we will attempt to respond to your opinion request based upon our best estimation of what the Day holding might require with respect to the questions you have presented.

You first ask whether the supreme court has "given...priority" in the Day case to drawing legislative district boundaries along county lines if the population of such districts fits within parameters set by the federal government and the Legislature, and if such boundaries do not violate federal statutes regarding ethnic representation, etc. We are not entirely sure what you mean by the phrase "given...priority." However, the Day decision seems to require that county lines must be followed in legislative redistricting whenever practicable so long as the districts still meet population and other legal requirements.

You next ask, "{i}f more than one legislative district can be drawn within a single county's boundaries and each remain within population parameters set by the federal statute or the Legislature without crossing county lines, is it incumbent upon the Legislature to do so?" This question is obviously beyond the scope of the fact situation presented in the Day case. However, we would note that portion of Article III,

Section 5 of the Nebraska Constitution which provides that, "...any county that contains population sufficient to entitle it to two or more members of the Legislature shall be divided into separate and distinct legislative districts, as nearly equal in population as may be and composed of contiguous and compact territory." We believe that this constitutional language taken with the holding in the Day case indicates that the answer to your question is "yes," when the resultant legislative districts in the county are all close to the population ideal and within the population variances established by the Legislature as was the case with Madison County in 1991.

Your third question involves the situation where two or more contiguous counties, considered together, have a total population which falls within the ideal population parameters established by the Legislature and federal law, and where those counties "can reasonably be integrated into a redistricting plan for the entire state." You wish to know, "Is it incumbent upon the Legislature to include these counties in a single legislative district?"

Again, this question goes considerably beyond the scope of the holding in the Day case, and our response must necessarily involve our estimation of what the court might do with this question. However, as noted above, it does appear clear from the Day decision that county lines must be granted deference in drawing redistricting plans for legislative districts. Moreover, the court in the Day case seems to equate the term "practicable" in Article III, Section 5 with "possible." As a result, Day appears to indicate that the Legislature must make an effort to follow county lines whenever possible, within the confines of the overriding interest in equality of population among legislative districts. Based upon these aspects of the Day decision, we believe that the answer to your third question is "yes" -- where two or more contiguous counties, considered together, have a total population which falls within the ideal population parameters for district equality, those counties must be joined in a single legislative district. However, we would qualify our "yes" response to this question by noting that equality of population among legislative districts is paramount, and it is improbable that equal population among legislative districts can be achieved without dividing some counties. Given this reality, we believe that it is unlikely that the court would reject a particular redistricting plan for another plan which exhibits only marginal improvement in following county lines. On the other hand, if one redistricting plan followed county lines 30% of the time and another plan followed county lines 60% of the time, and both plans met equal population requirements, there is little doubt in light of Day, that the court would strike down the 30% plan.

Finally, you ask, "Should the Legislature use as one of its primary criteria in creating districts for elected officials, the requirement to

follow county lines, if reasonable to do so?" Our answer to that question, in the case of legislative districts, is also "yes," to the extent that your question equates the term "reasonable" with the term "practicable" in Article III, Section 5 of the Nebraska Constitution.

Sincerely yours,
DON STENBERG
Attorney General
Dale A. Comer
Assistant Attorney General

(Signed)

cc: Patrick J. O'Donnell
Clerk of the Legislature

REPORTS

The following reports were received by the Legislature:

Quarterly reports from the Department of Roads for the Nebraska State Highway Commission as of March 31 and June 30, 1992.

Statements of deposits from the Department of Roads to the Highway Cash fund and Roads Operation Cash fund for the calendar months of March, April, May, and June 1992 in compliance with section 66-4,144, R.S. Supp. 1991.

Minutes of the Board of Public Roads Classifications and Standards for March, April, May, and June 1992.

Twenty-first annual report from the Nebraska Public Counsel/Ombudsman concerning the exercise of the functions of the Public Counsel's Office during the preceding calendar year, pursuant to Section 81-8,251, R.R.S. 1943.

Report submitted by the Nebraska Energy Office for the quarter ending March 31, 1992, covering the financial condition of the Natural Gas Revolving Loan Fund as required by Section 010 of the regulations for the Municipal Natural Gas Regulation Act (Sec. 19-4617, R.R.S. 1943).

Notice for Nebraska Investment Finance Authority's (NIFA) upcoming Single Family Bond Issue required pursuant to Neb. Rev. Stat. §58-270.

Quarterly report from the Nebraska Investment Finance Authority (NIFA) on the proceeds of the 1991 A-D Single Family Issue pursuant to Neb. Rev. Stat. § 58-270(4).

Quarterly report from the Nebraska Investment Finance Authority (NIFA) on the use of the proceeds of the 1992 Series A and Series B Community Development Loan Notes (City of Lincoln - 1992) Program pursuant to Neb. Rev. Stat. § 58-270(4).

Notice from the Nebraska Investment Finance Authority (NIFA) on the 1992 A-D Single Family Issue pursuant to Neb. Rev. Stat. § 58-270(3).

Reports of loans from the Nebraska Investment Finance Authority (NIFA) made under the Agricultural Division for the fiscal year July 1, 1991 through June 30, 1992 pursuant to Nebraska Revised Statute Section 58-246.

Annual report from the Nebraska Intergovernmental Data Communications Advisory Council.

Annual report from the Nebraska Business Development Center.

Annual report from the Department of Roads, Highway Safety Division, of traffic accident facts for 1991.

Annual report from the Supreme Court of Nebraska of the Juvenile Services Grant Committee as required by LB 663, 1990.

Annual report submitted by the Department of Social Services on child care and development licensing as defined by Nebraska Revised Statutes, Section 71-1910.

Documents submitted by the Department of Agriculture in accordance with the provisions of §§2-3901, et seq., as amended by LB 366: Part II of the Grade A Pasteurized Milk Ordinance, 1978, recommendations of the United States Public Health Service, Food and Drug Administration (1989 revision), as it exists on January 2, 1992; and Standards for the Fabrication of the Single-Service Containers and Closures for Milk and Milk Products as prescribed by the U.S. Department of Health and Human Services, as it exists on January 1, 1992.

Audit reports from the Auditor of Public Accounts for the following: Nebraska Public Service Commission; Board of Examiners for Professional Engineers and Architects; Public Employees' Retirement Systems; Public Employees' Retirement Systems - State and County Employees' Retirement Plans; Public Employees' Retirement Systems - Deferred Compensation Plan; Public Employees' Retirement Systems -

School Employees', Judges', and State Patrolmen's Retirement Systems; Nebraska Educational Telecommunication Commission; Nebraska Department of Aeronautics; Nebraska Coordinating Commission for Postsecondary Education; Nebraska Motor Vehicle Industry Licensing Board; and Nebraska State Treasurer.

Report from the Nebraska State Patrol of the Drug Control Cash Fund for the time period January to December 1991.

COMMUNICATIONS

Received a copy of House Concurrent Resolution No. 70 from the State of Delaware recognizing Labor Day as "Help Yourself, Buy American Day" in Delaware.

Received a copy of Assembly Joint Resolution 27 from the State of Wisconsin which requests appropriate action by Congress to propose an amendment to the U.S. Constitution prohibiting the physical desecration of the flag of the United States.

Received a copy of Senate Concurrent Resolution No. 24 from the State of Missouri relating to the "Help Yourself, Buy American" effort.

Received a copy of House Concurrent Resolution No. 24 from the State of Ohio memorializing Congress to review the provisions of the Social Security Act known as the Social Security Offset and Windfall.

BILLS ON FIRST READING

The following bills were read for the first time by title:

LEGISLATIVE BILL 1. Introduced by Warner, 25; Hall, 7; Landis, 46; Withem, 14, at the request of the Governor.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 2-2444, 13-501, 13-503, 13-508, 13-509, 14-1821, 15-808, 16-702, 17-955, 17-957, 18-2107, 21-17,126, 23-104, 23-132, 23-227, 23-250, 23-259, 23-320.07, 23-3201, 23-3502, 23-3515, 31-333, 31-410.01, 31-411.02, 31-447, 31-513, 31-711, 31-739, 31-773, 31-779, 32-4,114, 35-507, 39-1518, 39-1621, 46-541, 46-542, 46-543, 46-544, 46-631, 77-101, 77-103, 77-398, 77-399, 77-3,100, 77-505, 77-506, 77-507.01, 77-508, 77-604, 77-908, 77-1201, 77-1202, 77-1209, 77-1209.02, 77-1209.03, 77-1211, 77-1219, 77-1229, 77-1229.01, 77-1232, 77-1233.02, 77-1233.04, 77-1233.05, 77-1236, 77-1238, 77-1239, 77-1240.01, 77-1241.01, 77-1248, 77-1249, 77-1301,

77-1301.07, 77-1301.12, 77-1303, 77-1311.01, 77-1315, 77-1317, 77-1338, 77-1342, 77-1502, 77-1503.01, 77-1514, 77-1601, 77-1612, 77-1613, 77-1617, 77-1618, 77-1703, 77-1704, 77-1802, 77-1803, 77-1804, 77-1806, 77-1807, 77-1808, 77-1810, 77-1812, 77-1814, 77-1815, 77-1818, 77-1820, 77-1823, 77-1824, 77-1826, 77-1827, 77-1829, 77-1830, 77-1831, 77-1832, 77-1833, 77-1834, 77-1836, 77-1842, 77-1845, 77-1846, 77-1847, 77-1848, 77-1856, 77-1904, 77-1906, 77-1907, 77-1909, 77-1910, 77-1911, 77-1912, 77-1914, 77-1915, 77-1916, 77-1917, 77-1918, 77-27,136, 77-27,137, 77-27,139, 77-3402, 77-3411, 77-3701, 79-547.03, 79-1007, 79-1372, and 79-2210, Reissue Revised Statutes of Nebraska, 1943, as amended by Laws 1992, LB 1063, sections 1 to 19, 21, 22, 24 to 41, 43, 44, 54 to 60, 64, 91 to 93, 111 to 113, 96 to 110, 114, 116 to 125, 129 to 136, 139 to 179, 185 to 189, 195, 196, 198, 199, and 201, respectively, section 79-903, Revised Statutes Supplement, 1990, as amended by Laws 1992, LB 1063, section 197, sections 77-112, 77-201, 77-202, 77-509, 77-510, 77-1301.01, 77-1504, 77-1506.02, 77-1736.06, 77-2708, 77-3440, 77-3441, and 79-3814, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 1063, sections 46, 52, 53, 61, 63, 115, 126, 127, 138, 183, 193, 194, and 202, respectively, section 23-3501, Reissue Revised Statutes of Nebraska, 1943, as amended by Laws 1992, LB 1240, section 20, and Laws 1992, LB 1063, section 20, section 23-3552, Reissue Revised Statutes of Nebraska, 1943, as amended by Laws 1992, LB 1019, section 28, and Laws 1992, LB 1063, section 23, section 77-1510, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 360, section 35, and Laws 1992, LB 1063, section 128, section 77-3439, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 1001, section 10, and Laws 1992, LB 1063, section 192, sections 77-3437, 79-2203, 79-3816, and 79-3818, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 245, sections 10, 70, 86, and 88, respectively, and Laws 1992, LB 1063, sections 190, 200, 203, and 204, respectively, section 79-3819, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 245, section 89, Laws 1992, LB 719, section 4, and Laws 1992, LB 1063, section 205, sections 77-2701 and 77-2703, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 871, sections 3 and 25, respectively, and Laws 1992, LB 1063, sections 180 and 182, respectively, Laws 1981, LB 81, section 6, as amended by Laws 1992, LB 1063, section 207, Laws 1981, LB 81, section 5, as amended by Laws 1986, LB 124, section 3, Laws 1991, LB 137, section 2, and Laws 1992, LB 1063, section 206, and Laws 1992, LB 1063, sections 45, 47, 49 to 51, 62, 70, 94, 95, 137, and 181; to reenact provisions of Laws 1992, LB 1063; to eliminate conditional language relating to passage of a constitutional amendment in 1992; to change and provide termination dates; to correct and change operative date and repealer

provisions; to eliminate provisions on tax commissioners for cities of the primary class, the applicability of prior legislation, mobile home stickers, and taxation and listing of certain personal property; to harmonize provisions; to provide operative dates; to repeal the original sections, and also sections 13-514, 15-318, 15-319, 15-320, 15-321, 77-103.01, 77-202.46, 77-202.47, 77-1209.04, 77-1209.05, 77-1212, 77-1725, 77-27,140, 77-3702, 77-3703, 77-3704, and 77-3705, Reissue Revised Statutes of Nebraska, 1943, Laws 1992, LB 1063, sections 78 to 90, and Laws 1992, LB 1063, section 94, as amended by section 67 of this legislative bill; and to declare an emergency.

LEGISLATIVE BILL 2. Introduced by Warner, 25; Baack, 47.

A BILL FOR AN ACT relating to appropriations; to appropriate funds for the expenses incurred during the Ninety-second Legislature, Second Special Session, 1992; and to declare an emergency.

LEGISLATIVE BILL 3. Introduced by Hefner, 19.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-2701, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 871, section 3, and Laws 1992, LB 1063, section 180; to provide for a tax credit against income tax as prescribed; to define terms; to provide for rules and regulations; to provide an operative date; and to repeal the original section.

LEGISLATIVE BILL 4. Introduced by Bernard-Stevens, 42; Withem, 14.

A BILL FOR AN ACT relating to redistricting; to amend sections 50-1101, 50-1118, 50-1120, and 50-1151, Revised Statutes Supplement, 1991, and section 50-1152, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 946, section 1; to change and eliminate provisions relating to legislative districts; to harmonize provisions; to provide operative dates; to repeal the original sections, and also sections 50-1119 and 50-1141, Revised Statutes Supplement, 1991; and to declare an emergency.

LEGISLATIVE BILL 5. Introduced by Bernard-Stevens, 42.

A BILL FOR AN ACT relating to elections; to amend sections 32-516 and 32-537, Reissue Revised Statutes of Nebraska, 1943; to change provisions relating to petitioning on the ballot for the general election; to repeal the original sections; and to declare an emergency.

LEGISLATIVE BILL 6. Introduced by Elmer, 38; Dierks, 40; R. Johnson, 34; Peterson, 21; Schellpeper, 18.

A BILL FOR AN ACT relating to redistricting; to amend sections 50-1101 to 50-1151, Revised Statutes Supplement, 1991, and section 50-1152, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 946, section 1; to change and eliminate provisions relating to legislative districts; to harmonize provisions; to provide operative dates; and to repeal the original sections, and also sections 50-1119 and 50-1141, Revised Statutes Supplement, 1991; and to declare an emergency.

LEGISLATIVE BILL 7. Introduced by Conway, 17.

A BILL FOR AN ACT relating to redistricting; to amend sections 50-1101, 50-1118, 50-1120, and 50-1151, Revised Statutes Supplement, 1991, and section 50-1152, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 946, section 1; to change and eliminate provisions relating to legislative districts; to harmonize provisions; to provide operative dates; to repeal the original sections, and also sections 50-1119 and 50-1141, Revised Statutes Supplement, 1991; and to declare an emergency.

LEGISLATIVE BILL 8. Introduced by Conway, 17.

A BILL FOR AN ACT relating to redistricting; to eliminate provisions relating to legislative districts; and to repeal sections 50-1119 and 50-1141, Revised Statutes Supplement, 1991.

LEGISLATIVE BILL 9. Introduced by Conway, 17.

A BILL FOR AN ACT relating to elections; to amend section 32-537, Reissue Revised Statutes of Nebraska, 1943; to change provisions relating to petitioning on the ballot for the general election; to repeal the original section; and to declare an emergency.

LEGISLATIVE BILL 10. Introduced by L. Johnson, 15; Hefner, 19.

A BILL FOR AN ACT relating to redistricting; to amend sections 50-1101, 50-1118, 50-1120, and 50-1151, Revised Statutes Supplement, 1991, and section 50-1152, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 946, section 1; to change and eliminate provisions relating to legislative districts; to harmonize provisions; to provide operative dates; to repeal the original sections, and also

sections 50-1119 and 50-1141, Revised Statutes Supplement, 1991; and to declare an emergency.

RESOLUTIONS

LEGISLATIVE RESOLUTION 1. Introduced by Landis, 46; Schimek, 27; Chambers, 11; Beutler, 28; Wesely, 26; Warner, 25.

WHEREAS, JoAnn Maxey of Lincoln served as a member of the Legislature in 1977 and 1978; and

WHEREAS, JoAnn Maxey served as a member of the Lincoln Board of Education; and

WHEREAS, JoAnn Maxey devoted herself to many service organizations including the Malone Center, the PTA, the League of Women Voters, the Lincoln Action Program, and the NAACP; and

WHEREAS, JoAnn Maxey passed away on Tuesday, July 14, 1992, at the age of 54; and

WHEREAS, JoAnn Maxey is survived by her husband, Albert W. Sr., sons Albert W. Jr. and Aaron J., and daughters, Charlene and Michelle; and

WHEREAS, the contributions JoAnn Maxey gave to her community and to the State of Nebraska will be remembered by all those whose lives she touched.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SECOND LEGISLATURE OF NEBRASKA, SECOND SPECIAL SESSION:

1. That the members of the Legislature extend their sympathy to the family of JoAnn Maxey.

2. That a copy of this resolution be presented to the family of JoAnn Maxey.

Laid over.

LEGISLATIVE RESOLUTION 2CA. Introduced by Beutler, 28; Bernard-Stevens, 42; Conway, 17; Horgan, 4; Labeledz, 5.

A resolution to propose amending the Constitution of Nebraska.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SECOND LEGISLATURE OF NEBRASKA, SECOND SPECIAL SESSION:

Section 1. That at the general election in November 1992 there shall be submitted to the electors of the State of Nebraska for approval the following amendment to the Constitution of Nebraska to amend Article IV, section 20, Article V, section 5, and Article VII, sections 3

and 10, add a new section 5A to Article III, and repeal Article III, section 5:

III-5A "The Legislature shall redistrict the state after each federal decennial census. The primary basis for such redistricting shall be the population, excluding aliens, as shown by the next preceding federal decennial census. In no case shall the population of a legislative district, at the time redistricting is done, deviate by more than two percent from the population figure obtained by dividing the population of the state by the number of legislative districts. One member of the Legislature shall be elected from each district. Districts shall be composed of contiguous territory and shall be reasonably compact in form. District boundaries should respect the boundaries of counties and municipalities of the state but may deviate from such boundaries in recognition of the other standards set forth in this section and in recognition of existing communities of common economic interest. No district shall be drawn for the purpose of favoring or disfavoring a political party, an incumbent, or another person or group or for the purpose of diluting the voting strength of a language-minority group or racial-minority group. In establishing districts, no consideration shall be given to any of the following data, except as required by the Constitution and the laws of the United States:

- (1) Political affiliations of registered voters;
- (2) Previous election results; and
- (3) Demographic information other than population."

IV-20 "There shall be a Public Service Commission, consisting of not less than three nor more than seven members, as the Legislature shall prescribe, whose ~~term~~ terms of office shall be six years; and whose compensation shall be fixed by the Legislature. Commissioners shall be elected by districts of substantially equal population as the Legislature shall provide, but in no case shall the population of a Public Service Commission district, at the time redistricting is done, deviate by more than two percent from the population figure obtained by dividing the population of the state by the number of Public Service Commission districts. The Legislature shall redistrict the state after each federal decennial census. The primary basis for such redistricting shall be the population, excluding aliens, as shown by the next preceding federal decennial census. Districts shall be composed of contiguous territory and shall be reasonably compact in form. District boundaries should respect the boundaries of counties and municipalities of the state but may deviate from such boundaries in recognition of the other standards set forth in this section and in recognition of existing communities of common economic interest. No district shall be drawn for the purpose of favoring or disfavoring a political party, an incumbent, or another person or group or for the purpose of diluting the voting strength of a language-minority group or racial-minority

group. In establishing districts, no consideration shall be given to any of the following data, except as required by the Constitution and the laws of the United States:

- (1) Political affiliations of registered voters;
- (2) Previous election results; and
- (3) Demographic information other than population.

The powers and duties of such commission shall include the regulation of rates, service and general control of common carriers as the Legislature may provide by law. ~~But, in~~ In the absence of specific legislation, the commission shall exercise the powers and perform the duties enumerated in this provision."

V-5 "The Legislature shall divide the state into six ~~contiguous and compact~~ districts of approximately equal population; which shall be numbered from one to six; and which shall be known as the Supreme Court judicial districts. The Legislature shall redistrict the state after each federal decennial census. ~~In any such redistricting, county lines shall be followed whenever practicable, but other established lines may be followed at the discretion of the Legislature.~~ The primary basis for such redistricting shall be the population, excluding aliens, as shown by the next preceding federal decennial census. In no case shall the population of any Supreme Court judicial district, at the time redistricting is done, deviate by more than two percent from the population figure obtained by dividing the population of the state by the number of Supreme Court judicial districts. Districts shall be composed of contiguous territory and shall be reasonably compact in form. District boundaries should respect the boundaries of counties and municipalities of the state but may deviate from such boundaries in recognition of the other standards set forth in this section and in recognition of existing communities of common economic interest. No district shall be drawn for the purpose of favoring or disfavoring a political party, an incumbent, or another person or group or for the purpose of diluting the voting strength of a language-minority group or racial-minority group. In establishing districts, no consideration shall be given to any of the following data, except as required by the Constitution and the laws of the United States:

- (1) Political affiliations of registered voters;
- (2) Previous election results; and
- (3) Demographic information other than population.

Such districts shall not be changed except upon the concurrence of a majority of the members of the Legislature. Whenever the Supreme Court is redistricted, the judges serving prior to the redistricting shall continue in office; and the law providing for such redistricting shall ~~where~~ when necessary specify the newly established districts which they shall represent for the balance of their terms."

VII-3 "The State Board of Education shall be composed of eight members; who shall be elected from eight districts of substantially equal population as provided by the Legislature. The Legislature shall redistrict the state after each federal decennial census. The primary basis for such redistricting shall be the population, excluding aliens, as shown by the next preceding federal decennial census. In no case shall the population of any State Board of Education district, at the time such redistricting is done, deviate by more than two percent from the population figure obtained by dividing the population of the state by the number of State Board of Education districts. Districts shall be composed of contiguous territory and shall be reasonably compact in form. District boundaries should respect the boundaries of counties and municipalities of the state but may deviate from such boundaries in recognition of the other standards set forth in this section and in recognition of existing communities of common economic interest. No district shall be drawn for the purpose of favoring or disfavoring a political party, an incumbent, or another person or group or for the purpose of diluting the voting strength of a language-minority group or racial-minority group. In establishing districts, no consideration shall be given to any of the following data, except as required by the Constitution and the laws of the United States:

- (1) Political affiliations of registered voters;
- (2) Previous election results; and
- (3) Demographic information other than population.

Terms ~~Their term~~ of office of the members shall be for four years each. ~~Their duties~~ Duties and powers of the members shall be prescribed by the Legislature, and they shall receive no compensation; but shall be reimbursed their actual expense incurred in the performance of their duties. The members of the State Board of Education shall not be actively engaged in the educational profession, and they shall be elected on a nonpartisan ballot."

VII-10 "The general government of the University of Nebraska shall, under the direction of the Legislature, be vested in a board of not less than six nor more than eight regents to be designated the Board of Regents of the University of Nebraska, who shall be elected from and by districts as ~~herein~~ provided in this section, and three students of the University of Nebraska who shall serve as nonvoting members. Such nonvoting student members shall consist of the student body president of the University of Nebraska at Lincoln, the student body president of the University of Nebraska at Omaha, and the student body president of the University of Nebraska Medical Center. The terms of office of elected members shall be for six years each. The terms of office of student members shall be for the period of service as student body president. Their duties and powers shall be prescribed by law, ~~;~~ and

they shall receive no compensation; but may be reimbursed their actual expenses incurred in the discharge of their duties.

The Legislature shall divide the state, ~~along county lines,~~ into as many compact regent Board of Regents districts, ~~as there are regents provided by the Legislature,~~ of approximately equal population; which shall be numbered consecutively. The Legislature shall redistrict the state after each federal decennial census. The primary basis for such redistricting shall be the population, excluding aliens, as shown by the next preceding federal decennial census. In no case shall the population of any Board of Regents district, at the time redistricting is done, deviate by more than two percent from the population figure obtained by dividing the population of the state by the number of Board of Regents districts. Districts shall be composed of contiguous territory and shall be reasonably compact in form. District boundaries should respect the boundaries of counties and municipalities of the state but may deviate from such boundaries in recognition of the other standards set forth in this section and in recognition of existing communities of common economic interest. No district shall be drawn for the purpose of favoring or disfavoring a political party, an incumbent, or another person or group or for the purpose of diluting the voting strength of a language-minority group or racial-minority group. In establishing districts, no consideration shall be given to any of the following data, except as required by the Constitution and the laws of the United States:

(1) Political affiliations of registered voters;

(2) Previous election results; and

(3) Demographic information other than population.

Such districts shall not be changed except upon the concurrence of a majority of the members of the Legislature. ~~In any such redistricting, county lines shall be followed whenever practicable, but other established lines may be followed at the discretion of the Legislature.~~ Whenever the state is so redistricted the members elected prior to the redistricting shall continue in office, and the law providing for such redistricting shall ~~where~~ when necessary specify the newly established district which they shall represent for the balance of their term."

"Article III, section 5, of the Constitution of Nebraska is repealed."

Sec. 2. That the proposed amendment shall be submitted to the electors in the manner prescribed by the Constitution of Nebraska, Article XVI, section 1, with the following ballot language:

"A constitutional amendment to change and provide standards for redistricting legislative, Public Service Commission, State Board of Education, and Board of Regents districts and Supreme Court judicial districts.

For

Against".

Referred to the Reference Committee.

EASE

The Legislature was at ease from 3:24 p.m. until 3:33 p.m.

BILLS ON FIRST READING

The following bills were read for the first time by title:

LEGISLATIVE BILL 11. Introduced by Dierks, 40.

A BILL FOR AN ACT relating to redistricting; to amend sections 50-1101, 50-1118, 50-1120, and 50-1151, Revised Statutes Supplement, 1991, and section 50-1152, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 946, section 1; to change and eliminate provisions relating to legislative districts; to harmonize provisions; to provide operative dates; to repeal the original sections, and also sections 50-1119 and 50-1141, Revised Statutes Supplement, 1991; and to declare an emergency.

LEGISLATIVE BILL 12. Introduced by Schellpeper, 18; Dierks, 40.

A BILL FOR AN ACT relating to redistricting; to amend sections 50-1101, 50-1117, 50-1118, 50-1120, and 50-1151, Revised Statutes Supplement, 1991, and section 50-1152, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 946, section 1; to change and eliminate provisions relating to legislative districts; to harmonize provisions; to provide operative dates; to repeal the original sections, and also sections 50-1119 and 50-1141, Revised Statutes Supplement, 1991; and to declare an emergency.

LEGISLATIVE BILL 13. Introduced by Schellpeper, 18.

A BILL FOR AN ACT relating to redistricting; to amend sections 50-1101, 50-1117, 50-1118, 50-1120, and 50-1151, Revised Statutes Supplement, 1991, and section 50-1152, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 946, section 1; to change and eliminate provisions relating to legislative districts; to harmonize provisions; to provide operative dates; to repeal the original sections, and also sections 50-1119 and 50-1141, Revised Statutes Supplement, 1991; and to declare an emergency.

LEGISLATIVE BILL 14. Introduced by Conway, 17.

A BILL FOR AN ACT relating to redistricting; to amend sections 50-1101, 50-1118, 50-1120, and 50-1151, Revised Statutes Supplement, 1991, and section 50-1152, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 946, section 1; to change and eliminate provisions relating to legislative districts; to harmonize provisions; to provide operative dates; to repeal the original sections, and also sections 50-1119 and 50-1141, Revised Statutes Supplement, 1991; and to declare an emergency.

EASE

The Legislature was at ease from 3:46 p.m. until 4:12 p.m.

BILLS ON FIRST READING

The following bills were read for the first time by title:

LEGISLATIVE BILL 15. Introduced by Schrock, 39; Elmer, 38.

A BILL FOR AN ACT relating to redistricting; to amend sections 50-1139 and 50-1145, Revised Statutes Supplement, 1991; to change provisions relating to legislative districts; to repeal the original sections; and to declare an emergency.

LEGISLATIVE BILL 16. Introduced by Schrock, 39.

A BILL FOR AN ACT relating to redistricting; to amend sections 50-1139 and 50-1145, Revised Statutes Supplement, 1991, and section 50-1152, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 946, section 1; to change provisions relating to legislative districts; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

REFERENCE COMMITTEE REPORT

The Legislative Council Executive Board submits the attached report on the referral of legislative bills 1 through 16, legislative resolution 2CA, and Governor appointments.

LB	Committee
1	Revenue
2	General File
3	Revenue
4	Government, Military and Veterans Affairs

5	Government, Military and Veterans Affairs
6	Government, Military and Veterans Affairs
7	Government, Military and Veterans Affairs
8	Government, Military and Veterans Affairs
9	Government, Military and Veterans Affairs
10	Government, Military and Veterans Affairs
11	Government, Military and Veterans Affairs
12	Government, Military and Veterans Affairs
13	Government, Military and Veterans Affairs
14	Government, Military and Veterans Affairs
15	Government, Military and Veterans Affairs
16	Government, Military and Veterans Affairs

LR Committee

2CA Government, Military and Veterans Affairs

Agriculture

Dale Johnson - Dry Bean Commission

Education

Patrick G. Rogers - Board of Educational Lands and Funds

Government, Military and Veterans AffairsRobert W. Shively - Nebraska Accountability and Disclosure
Commission

Jack D. Campbell - Crime Victims Reparation Committee

James J. Riskowski - Crime Victims Reparation Committee

Health and Human Services

Linsay R. Darnall - Commission for the Hearing Impaired

Julie A. Dahlke - Commission for the Hearing Impaired

David F. Conway - Commission for the Hearing Impaired

Mark A. Kellough - Board of Health

Judiciary

Steven M. Renteria - Nebraska Parole Board

Natural Resources

Robert H. Warrick - Environmental Control Council

Transportation

Vera Dulaney - Motor Vehicle Industry Licensing Board

James W. Bauer - Board of Public Roads Classifications and Standards

Eldon Orth - Board of Public Roads Classifications and Standards

Henry R. Thieman - Board of Public Roads Classifications and

Standards

David O. Janke - Board of Public Roads Classifications and Standards

Larry L. Herrmann - Board of Public Roads Classifications and
Standards

David L. Coolidge - Board of Public Roads Classifications and
Standards

Transportation

Ed Gilbert - Board of Public Roads, Classifications and Standards

Natural Resources

Gary S. Goldberg - Ethanol Authority and Development Board

General Affairs

John (Jack) M. Crowley - Nebraska Liquor Commission

(Signed) Jerome Warner, Chairperson
Legislative Council
Executive Board

NOTICE OF COMMITTEE HEARINGS
Health and Human Services

Governor Appointments Thursday, August 6, 1992 9:30 a.m.

Dr. Mark Kellough - State Board of Health

Violet Fickel - Foster Care Review Board

Julie Dahlke - Commission for the Hearing Impaired

Linsay Darnall - Commission for the Hearing Impaired

(Signed) Don Wesely, Chairperson

Natural Resources

Governor Appointments Wednesday, August 5, 1992 1:00 p.m.

Gary S. Goldberg - Ethanol Authority and Development Board

Robert H. Warrick - Environmental Control Council

(Signed) Rod Johnson, Chairperson

Revenue

LB 1 Monday, August 3, 1992 9:30 a.m.

LB 3 Monday, August 3, 1992 9:30 a.m.

(Signed) Timothy Hall, Chairperson

Agriculture

Governor Appointment Friday, August 7, 1992 9:30 a.m.
 Dale Johnson - Nebraska Dry Bean Commission

(Signed) Carson Rogers, Chairperson

Transportation

Governor Appointments Tuesday, August 11, 1992 1:30 p.m.
 Vera Dulaney - Motor Vehicle Industry Licensing Board
 Board of Public Roads Classification and Standards
 James W. Bauer
 Eldon Orth
 Henry R. Thieman
 David O. Janke
 Larry L. Herrmann
 David L. Coolidge
 Ed Gilbert

(Signed) Doug Kristensen, Chairperson

Judiciary

Governor Appointment Wednesday, August 5, 1992 12:30 p.m.
 Steven M. Renteria - Parole Board Chairman

(Signed) Jerry Chizek, Chairperson

Government, Military and Veterans Affairs

Sec. of State Appointment Tuesday, August 4, 1992 10:30 a.m.
 Robert W. Shively - Nebraska Accountability and Disclosure Commission

LB 9	Tuesday, August 4, 1992	9:30 a.m.
LB 7	Tuesday, August 4, 1992	9:30 a.m.
LB 8	Tuesday, August 4, 1992	9:30 a.m.
LB 14	Tuesday, August 4, 1992	9:30 a.m.
LB 4	Tuesday, August 4, 1992	9:30 a.m.
LB 5	Tuesday, August 4, 1992	9:30 a.m.
LB 6	Tuesday, August 4, 1992	9:30 a.m.
LB 10	Tuesday, August 4, 1992	9:30 a.m.
LB 11	Tuesday, August 4, 1992	9:30 a.m.

LB 12	Tuesday, August 4, 1992	9:30 a.m.
LB 13	Tuesday, August 4, 1992	9:30 a.m.
LB 15	Tuesday, August 4, 1992	9:30 a.m.
LB 16	Tuesday, August 4, 1992	9:30 a.m.
LR 2CA	Tuesday, August 4, 1992	9:30 a.m.

(Signed) Gerald Conway, Chairperson

General Affairs

Governor Appointment	Tuesday, August 11, 1992	1:30 p.m.
John (Jack) M. Crowley - Nebraska Liquor Commission		

(Signed) Stan Schellpeper, Chairperson

RESOLUTION

LEGISLATIVE RESOLUTION 3. Introduced by Cudaback, 36; Schrock, 39.

WHEREAS, Gothenburg, Nebraska, is historically located on the first transcontinental highway to the west; and

WHEREAS, the Oregon Trail, the Overland Trail, and the routes of Mormons and Pony Express Riders intertwined and passed through this Platte Valley area; and

WHEREAS, Gothenburg, Nebraska, was the location of two Pony Express Stations, one still on the original site; and

WHEREAS, Gothenburg, Nebraska, has attained national recognition among tourists as the "Home of the Original Pony Express Station"; and

WHEREAS, the Pony Express Station located in Ehmen Park, Gothenburg, Nebraska, was rated in a recent Nebraska Department of Economic Development survey as the second most popular historic attraction in the state.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SECOND LEGISLATURE OF NEBRASKA, SECOND SPECIAL SESSION:

1. That Gothenburg, Nebraska, be designated as the Pony Express Capital of Nebraska.

2. That a copy of this resolution be sent to Mr. Richard L. Blase, Mayor of Gothenburg.

Laid over.

UNANIMOUS CONSENT - Print in Journal

Messrs. Lamb, Rogers, Peterson, R. Johnson, Cudaback, Dierks, Coordsen, Elmer, Byars, Moore, Hefner, L. Johnson, Beyer, Schellpeper, Schrock, and Schmit asked unanimous consent to print the following amendment to LB 1 in the Journal. No objections. So ordered.

AM002S

- 1 1. On page 80, after line 2, insert the
- 2 following new subdivision:
- 3 "(7) Livestock shall be exempt from the
- 4 personal property tax."

VISITORS

Visitors to the Chamber were Zsolt Neureth from Hungary and Marcel Haenen from the Netherlands; Dr. Nancy Herron and Bonnie Herron; and Senator Lamb's grandson, Chris Lamb.

ADJOURNMENT

At 4:15 p.m., on a motion by Mr. Elmer, the Legislature adjourned until 10:00 a.m., Wednesday, August 5, 1992.

Patrick J. O'Donnell
Clerk of the Legislature

SECOND DAY - AUGUST 5, 1992

LEGISLATIVE JOURNAL

**NINETY-SECOND LEGISLATURE
SECOND SPECIAL SESSION**

SECOND DAY

Legislative Chamber, Lincoln, Nebraska
Wednesday, August 5, 1992

Pursuant to adjournment, the Legislature met at 10:02 a.m., President Moul presiding.

PRAYER

The prayer was offered by Senator Lowell C. Johnson.

ROLL CALL

The roll was called and all members were present except Messrs. Kristensen, Landis, Lindsay, Withem, and Mrs. Rasmussen who were excused; and Messrs. Abboud, Beutler, Chambers, Hefner, Lamb, and Schmit who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the first day was approved.

**STANDING COMMITTEE REPORTS
Revenue**

LEGISLATIVE BILL 1. Placed on General File.

LEGISLATIVE BILL 3. Placed on General File as amended.
Standing Committee amendment to LB 3:
AM014S

- 1 1. Strike the original sections and insert
- 2 the following new sections:
- 3 "Section 1. That section 77-1229, Reissue
- 4 Revised Statutes of Nebraska, 1943, as amended by Laws

5 1992, LB 1063, section 98, be amended to read as
6 follows:

7 77-1229. Every person required by section
8 77-1201 to list taxable tangible personal property shall
9 list such property ~~upon the~~ on forms prescribed by the
10 Tax Commissioner. ~~The forms shall be~~ and furnished by
11 the county assessor. On or before March 1 of each year
12 the county assessor shall mail a form to each person he
13 or she knows or has reason to believe may be required to
14 list taxable tangible personal property. When and when
15 completed the form shall be signed by each the person or
16 his or her agent and be filed with the county assessor
17 on or before May 1 of each year. A person who is
18 required to list taxable tangible personal property
19 shall not be excused from filing the form by virtue of
20 not having received the form by mail. If a
21 ~~constitutional amendment amending Article VIII of the~~
1 ~~Constitution of Nebraska is adopted in 1992, the forms~~
2 ~~shall be filed on or before June 1 for 1992 and on or~~
3 ~~before May 1 for all other years. If Article VIII of~~
4 ~~the Constitution of Nebraska is not amended in 1992, the~~
5 ~~forms shall be filed on or before June 1 for 1992 and on~~
6 ~~or before March 1 for all other years. If severe~~
7 ~~weather conditions or natural disaster prohibits the~~
8 ~~person from complying with this section, the county~~
9 ~~assessor may allow an extension without application but~~
10 ~~not more than fifteen days.~~

11 Sec. 2. That Laws 1992, LB 1063, section 47,
12 be amended to read as follows:

13 Sec. 47. Nebraska adjusted basis shall mean
14 the adjusted basis of property as determined under the
15 Internal Revenue Code of 1986, as amended, as the code
16 exists on the assessment date, increased by the total
17 amount allowed under the code for depreciation or
18 amortization or pursuant to an election to expense
19 depreciable property under section 179 of the code, as
20 amended, and decreased by the amount of state and local
21 sales and use tax paid in Nebraska with respect to the
22 acquisition of the property.

23 Sec. 3. This act shall become operative on
24 January 1, 1993.

1 Sec. 4. That original section 77-1229,
2 Reissue Revised Statutes of Nebraska, 1943, as amended
3 by Laws 1992, LB 1063, section 98, and Laws 1992, LB
4 1063, section 47, are repealed."

(Signed) Timothy Hall, Chairperson

ATTORNEY GENERAL'S OPINIONS

Opinion No. 92097

DATE: July 27, 1992

SUBJECT: Authority of the Santee Sioux Tribe to Regulate
the Application of Farm Chemicals and
Pesticides.

REQUESTED BY: Senator Elroy M. Hefner
Nebraska State Legislature, District 19

WRITTEN BY: Don Stenberg, Attorney General
Linda L. Willard, Assistant Attorney General

You have asked several questions regarding the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) and the Santee Sioux Tribe which we will attempt to address separately. The relationship among state, federal and tribal governments is complicated and varies from tribe to tribe. Your questions are addressed specifically to the Santee Sioux Tribe of Nebraska and therefore our response is limited to relations with the Santee Tribe. The answers given could be very different if the same questions were asked of relations with the Winnebago or Omaha Tribes of Nebraska.

In order to understand the current relationship between the state and the Tribe, it may first be helpful to have a general background history of governmental involvement with the Santee Tribe. During the 1800's the United States government entered into a series of "peace and friendship" treaties with the various Indian tribes reserving certain areas for exclusive use and occupation by the tribe. The essence of the treaties was that the Indian tribes relinquished their aboriginal sovereignty and acquiesced to a dependent status under the United States government in exchange for lands being set aside specifically for their use and for government protection of such lands and Indian peoples. Thereby the United States became the trustee of the Indian tribes.

Another general provision of these treaties was that no person, not of Indian heritage, shall enter or reside in such territory without the express consent of the tribal authority. This provision gave the Indian tribes total power to exclude nonmembers and to regulate all affairs

within the reservation boundaries. However, this ability to regulate and exclude was subject to Congressional mandate.

The first "peace and friendship" treaty with the Santee Sioux was signed in 1830. 7 Stat. 328. This treaty initially brought the Santee Sioux under the protection of the United States. Subsequent treaties later relinquished a greater part of the Indian lands held by the Santee. See 7 Stat. 524 and 15 Stat. 635. The relations with the Santee Sioux Indians and the United States government were stable until the Santee uprising of 1862. Subsequently the Santee were moved to the Crow Creek Indian Reservation in Dakota Territory. Then by executive order on August 31, 1869, President Andrew Johnson created the Santee Indian Reservation at its present location in Knox County, Nebraska. 1 Kappler 864.

The most significant Congressional mandate affecting tribal authority was the General Allotment Act of 1887. 24 Stat. 388. It was an effort to assimilate the Indian people into the Anglo Saxon culture by issuing land patents to individual Indian allottees within the reservation. Under the Act, an allottee could alienate his land to a non-Indian after holding it for 25 years. 24 Stat. at 389. Many individual Indians either sold their land to non-Indians or the land was condemned by the government for failure to pay taxes and then sold to non-Indians. The Santee Sioux Indians came under the General Allotment Act of 1887, and also were affected by the Sioux Allotment Act of March 2, 1889. 25 Stat. 888. A great amount of the land held in trust for the Santee Tribe was allotted to individual Santee Indians. A significant percentage of the land allotted to individual Indians was subsequently alienated to non-Indians. Today nearly 91 percent of Santee reservation land in Nebraska is held in fee by non-Indians. Realty Division, bureau of Indian Affairs, Winnebago, Nebraska and Indians of Nebraska: Santee Sioux, Nebraska Indian Commission. The General Allotment Act indirectly reduced the tribal authority. Indian tribes no longer could exclude nonmembers and it became increasingly difficult to define or limit the internal affairs.

The General Allotment Act was repealed by the Indian Reorganization Act of 1934. 48 Stat. 984. However, this act was not retroactive and the lands held in fee by non-Indians did not return to the United States to hold in trust for the Indian tribes. The presence of non-Indians within reservation boundaries has created a problem of competing jurisdictions between the Indian tribes and the states.

The matter is complicated even more by the federal government's enactment of Public Law 280 (PL-280) in 1953. PL-280 transferred complete criminal and limited civil jurisdiction over the reservations regardless of the Tribal preference for continued autonomy. Nebraska was one of the states required to accept criminal and civil jurisdiction over all Indian country within the state. A subsequent amendment in

1968 allowed the transfer of criminal and limited civil jurisdiction back to the federal government. 25 U.S.C. § 1323. Nebraska took this opportunity and retroceded jurisdiction back to the Omaha Tribe in 1969, see LR 37 80th Legis. Sess., Neb. Legis. J. v.1, p. 1467 (1969), and the Winnebago Tribe in 1986, See LR 303 89th Legis., 2nd Sess., Neb. Legis. J. v.1, p. 91 (1986). State jurisdiction of the Santee Tribe has not retroceded.

Your question is whether the Santee Tribe has the legal capability to regulate the application of farm chemicals and pesticides under FIFRA or other laws. As a general proposition, Indian tribes hold certain powers in the area of civil jurisdiction, powers which are inherent by virtue of their quasi-sovereign status. These attributes of sovereignty extend over both their members and their territory, United States v. Mazurie, 419 U.S. 544, 95 S.Ct. 710, 42 L.Ed. 2d 706 (1975), and is generally retained by way of tribal self-government and control over other aspects of its internal affairs. Montana v. United States, 450 U.S. 544, 564, 101 S.Ct. 1245, 1257 67 L.Ed.2d 493 (1981). This sovereign status gives the Indian tribes broad powers in areas of self government and regulating the affairs of their members and Indian lands within the reservation.

This sovereign status is likely to translate into authority regarding environmental regulation of tribal members and Indian trust land. Under the current EPA policy, tribal governments are recognized as independent sovereigns with authority and responsibility over reservations roughly analogous to that of state governments. See Office of the Administrator, United States Environmental Protection Agency, Indian Policy Implementation Guidance (November 8, 1984) and EPA Policy for the Administration of Environmental Programs on Indian Reservations (November 8, 1984) (together referred to as "EPA Indian Policy"). In fact, the "federal government has a policy of encouraging tribal self government in environmental matters." Washington Department of Ecology v. United States Environmental Protection Agency, 752 F.2d 1465, 1471 (9th Cir. 1985). FIFRA contains a specific provision allowing the Indian tribes to negotiate agreements with the Administrator of the Environmental Protection Agency. Under 7 U.S.C. § 136(u) the Administrator of the EPA may enter into cooperative agreements with states and Indian tribes to carry out the enforcement of the FIFRA regulations. This section is consistent with the federal government policy encouraging of the tribes to participate in environmental matters.

The policies and practices of the EPA reflect the federal commitment to tribal self regulation in environmental matters. In November, 1984, the EPA issued a policy directive for the administration of its responsibilities on Indian reservations. Included in the policy statement was the intention to involve Indians in

environmental decision-making by recognizing tribal governments as the primary parties for making environmental policy decisions and managing environmental programs for reservations consistent with EPA standards and regulations. See "EPA Indian Policy" *supra*.

We conclude that the federal proposition that Indian tribes possess an inherent sovereignty is likely to allow the Santee Tribe to enter into a cooperative agreement with the EPA Administrator to carry out enforcement of regulations under FIFRA. Current EPA policy and amendments to federal regulations have included tribal participation in environmental matters. The Courts are also leaning toward increased tribal participation in environmental matters within reservation borders. However, the extent of tribal authority to enact regulations may be limited as discussed below.

Your second question is whether the Santee Tribe may promulgate regulations which are stricter than the federal government requires. Although the Santee tribe may participate in enforcement of FIFRA regulations, they do not possess the power to promulgate regulations under FIFRA. However, the courts tend to interpret an implied authority within the tribe unless Congress explicitly indicates to the contrary.

The federal government has placed primary enforcement responsibility for pesticide use violations under FIFRA with the states. Although the Indian tribes are included in 7 U.S.C. § 136(u), this provision only provides that a cooperative agreement concerning funding, training, and certification programs may be entered into between the Administrator of the EPA and the states or Indian tribes. Indian tribes are not mentioned in any other provision of FIFRA, and it contains no express provision for "the treatment of Indian tribes as states." Glover and Walker, *Tribal Environmental Regulation*, 36 Fed.B. & News 438, 444 (1989). It appears from the face of FIFRA, that the power of the tribal authority is limited under the Act. The tribe may not have the power to promulgate regulations beyond the federal mandates currently in force. The authority may be limited to training, certification, and enforcement.

However, the courts have a tendency to interpret an implied authority invested in the Indian tribes where there is no express provision to the contrary. See *Nance v. EPA*, 645 F.2d 701 (9th Cir. 1981). This is a continuation of the tribal sovereignty principle. Thus, while tribal authority to enact stricter regulations is not explicit within FIFRA, the courts could grant an implied authority in the absence of an express Congressional mandate to the contrary.

You next ask whether the tribe can enforce such regulations on non-Indians owning fee lands within the reservation boundaries. The extent of tribal authority must be read in light of the alienation of Indian trust lands. However, it is possible that non-Indians owning fee

lands will be affected by tribal regulation under FIFRA. The Supreme Court has recognized that tribal power can extend to activities of non-members on fee lands if there is a tribal interest sufficient to justify the exercise of tribal authority. Yet, another line of authority turns on the nature of the land affected and the percentage held in fee.

A leading case determining the Tribe's power to regulate is Montana v. United States, 450 U.S. 544, 101 S.Ct. 1245, 67 L.Ed.2d 493 (1981). In Montana, the Crow Tribe of Montana sought to prohibit hunting and fishing within its reservation by anyone not a member of the tribe. They asserted that the treaties which created the reservation and its inherent powers of sovereignty gave the tribe the authority to prohibit hunting and fishing by non-members of the tribe even on lands within the reservation held in fee simple by non-Indians. The Supreme Court did not agree with this rationale. The Court determined that treaty rights with respect to reservation lands must be read in light of the subsequent alienation of those lands under the General Allotment Act of 1887. Id. at 561. The alienation of lands to non-Indians, served to divest the sovereignty held by the Indian tribes. The Montana court reiterated the holding of United States v. Wheeler, 435 U.S. 313, 326, 98 S.Ct. 1079, 1087, 55 L.Ed.2d 303 (1978) that,

"an implicit divestiture of sovereignty has been held to occur in those areas involving the relations between an Indian tribe and non-members of the tribe. These limitations rest on the fact that the dependent status of Indian tribes within our territorial jurisdiction is necessarily inconsistent with their freedom independently to determine their external relations."

The Montana Court determined that regulation of hunting and fishing rights on fee lands held by non-Indians was determined to be a matter of external relations. Thus, the tribe no longer possessed the authority under its sovereignty to regulate hunting and fishing by non-Indians on fee land.

In the current situation, the treaties with the Santee Tribe must be read in light of the subsequent alienation under the General Allotment Act of 1887. Such allotment divested the Santee Tribe of the inherent ability to exclude non-members from the reservation. Also the Nebraska Legislature has never retroceded jurisdiction to the Santee Tribe. This divestiture of sovereignty can be taken further to conclude that the Santee Tribe does not have the authority to regulate non-Indians on lands held in fee on the Santee Reservation. This is consistent with the Montana Court's reiteration of McClanahan v. Arizona State Tax Commission, 411 U.S. 164, 171, 93 S.Ct. 1257, 1261, 36 L.Ed.2d 129 (1973), holding that, "exercise of tribal power beyond what is necessary to protect tribal self government or to control internal relations is inconsistent with the dependant status of the tribes, so cannot survive without express congressional delegation."

The express congressional delegation may however be found in the FIFRA Act. The Act specifically has a section allowing tribal governments to carry out the enforcement of the FIFRA regulations. 7 U.S.C. § 136(u). However, the extent of this tribal authority is likely to be limited to enforcement rather than promulgation of environmental regulations.

The court in the Montana case at 566 stated that, "the tribe may also retain inherent power to exercise civil authority of the conduct of non-Indians on fee lands within this reservation if the conduct threatens or has some direct effect on the political integrity, economic security, the health or welfare of the tribe." The chemicals regulated under FIFRA are dangerous in nature. They generally are used to kill various types of plants, insects, and rodents. Some of these chemicals are poisonous and dangerous to humans. The regulation and use of such chemicals may be seen to effect the health and welfare of the tribe and its members.

One argument against Indian tribal authority to regulate non-Indians is that non-Tribal members cannot participate in tribal government and thereby are denied a form of due process. The 10th Circuit addressed this argument in Knight v. Shoshone and Arapahoe Indian Tribes, 670 F.2d 900 (1981). The court in Knight determined that a non-Indian developer was subject to the tribal zoning code and "the fact that the code applies to and affects non-Indians who cannot participate in tribal government is immaterial." Id. at 903. The actions of the developer were found to directly affect tribal and allotted lands by changing the nature of the area from rural to urban. The court also justified their holding by the fact that no zoning ordinance other than the tribe's was in effect. Neither the State of Wyoming nor any of its political subdivisions had exercised the power of land use control within the exterior boundaries of the reservation.

The decision in Knight supra is important for the State of Nebraska. The State of Nebraska does not have any program to enforce FIFRA regulations. In the absence of State regulations, federal officials may give the tribe authority to regulate non-Indians under FIFRA regardless of the inability of non-Indians to participate in tribal government.

Another important case to consider in determining whether the regulations will affect non-Indians is Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation, 492 U.S. 408, 109 S.Ct. 2994, 106 L.Ed.2d 343 (1989). This case deals with two conflicting zoning ordinances. The County of Yakima and the Yakima Indian Tribes both enacted zoning ordinances dealing with certain lands held by Brendale and another affected party Wilkinson. The zoning ordinances conflicted with each other and a lawsuit followed. In split decisions, the Court held that the tribe did have the authority to regulate the Brendale property located in the reservation's "closed area" and at the same time

held that the tribe lacked the authority to zone the Wilkinson property which is located in the reservation's "open area." This case largely turned on the distinction between the reservation's open and closed area. The reservation was divided into two parts; a closed area and an open area. The closed area consisted of 807,000 acres of land of which 25,000 acres, 3 percent, were held in fee by non-Indians. The District Court also found a number of places of religious and cultural significance located in the closed area. 492 U.S. at 419, 109 S.Ct. at 3002, n.5. Also the closed area had been closed to the general public since 1972 when the Bureau of Indian Affairs restricted the use of federally maintained roads in the area to members of the Yakima Nation and to its permittees, who must be record land owners associated with the tribe. In contrast, the general public was not restricted from owning land in the open area and almost half of the land in the open area was land owned in fee. Nor did the District Court find a unique religious or spiritual importance to the open area of the Yakima Reservation. 492 U.S. at 419, 109 S.Ct. at 3002, n.5.

Currently there are no lands on the Santee Reservation which are "closed" to the general public. In fact, nearly 91 percent of the land on the Santee Reservation is owned in fee by non-tribal members. The policy of preserving the integrity of the reservation behind the Brendale decision does not appear to be present on the Santee Reservation. There is no "closed area" on the Santee Reservation where the cultural, religious, and tribal sovereignty are predominant. The Santee Reservation more closely resembles the "open area" found in Brendale. The percentage of land owned in fee by non-Indians is significantly higher than the approximate 50% on the Yakima Nation's open area. Only 10,000 acres of the original 115,075 are currently held in trust for individual Indians or the Santee Tribe. Therefore, if a court interprets the situation to turn on the percentage of land owned in fee by non-Indians, they may determine that the Santee Tribe cannot exercise power over non-Indians concerning FIFRA regulation.

The power and authority of the Santee tribe must be read in light of the alienation of the Indian lands. Over 91 percent of the lands on the Santee reservation have been alienated and are now held by non-Indians in fee. It is possible that enforcement of FIFRA regulations will be seen to fall under the exception noted in Montana. Although environmental regulation does not fall under the general rule, it is possible that the regulation of pesticides will be seen to effect the health, safety, welfare, and political integrity of the tribe. Also the fact that non-Indians are not allowed to participate in tribal government is irrelevant. However, the nature of the land distinction made in Brendale is closely related to the current situation and favors the position that the tribe should not have authority to regulate non-Indians on the reservation.

Your final question is whether the State of Nebraska would supersede the tribal authority if it enacted FIFRA legislation. It is unlikely that the State of Nebraska will supersede the tribal authority as to member Indians or trust land in enforcement under FIFRA. "State laws generally are not applicable to tribal Indians on an Indian reservation except where congress has expressly provided that state laws shall apply." McClanahan v. Arizona State Tax Commission, 411 U.S. at 170-171, 93 S.Ct. at 1261. See also Bryan v. Itasca County, 426 U.S. 373, 376, 96 S.Ct. 2102, 2105 n.2 (1976). In Washington Department of Ecology, 752 F.2d 1465, the State of Washington filed a petition for review of an Environmental Protection Agency decision to exclude Indian lands from the approved State hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA concluded that RCRA does not give State jurisdiction over Indian lands, and that States could possess such jurisdiction only through an express act of Congress or by treaty. The Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. § 6901 *et seq.*, does not expressly provide that States can exercise jurisdiction over Indians in Indian country. Without such consent, the State of Washington could not supersede tribal authority over member Indians or trust lands.

However, a state may effectively regulate non-Indians on fee lands within reservation boundaries. Generally, in the absence of federal legislation to the contrary, state law reaches within the exterior boundaries of an Indian reservation only if it would not infringe on the right of reservation Indians to make their own laws and be ruled by them. Washington v. Confederated Bands and Tribes of Yakima Indian Nation, 99 S.Ct. 740, 439 U.S. 463, 58 L.Ed.2d 470 (1979) rehearing denied 99 S.Ct. 1290, 440 U.S. 440, 59 L.Ed.2d 500, or remand 608 F.2d 750. This case involved Washington's assumption of civil and criminal jurisdiction over Indians and Indian territory within the State, subject to consent of the Indian tribes affected. The Yakima Nation did not consent. As a result the State's authority depended on the nature of the property on which the offense or transaction occurred. The Supreme Court upheld the State's assumption of complete criminal and civil jurisdiction over non-Indians and fee lands despite the checker board jurisdiction which resulted. The enforcement of jurisdiction over non-Indians on fee lands was found not to infringe on the rights of self government of the Yakima Nation. 99 S.Ct. at 762.

Additionally, the Santee Tribe has not received the benefit of retrocession. As such, the state still exercises criminal and limited civil jurisdiction over the Santee reservation. This fact, combined with the decision in Confederated Bands of Yakima *supra*, favor the state's authority over non-Indian and fee lands. Therefore, the State of Nebraska should be able to assert its jurisdiction over non-Indians and

fee lands should it enact FIFRA regulations, despite a checker board pattern on the reservation.

In the current situation, Congress expressly provides for Indian tribes to take authority for enforcement of FIFRA regulation within reservation boundaries under the FIFRA Act, 7 U.S.C. § 136(u). This section takes away from the states any power to regulate Indians or Indian trust land within reservation boundaries without EPA approval. The State may petition the EPA for authority to enforce regulations on a state wide basis to include member Indians, and Indian trust lands within the reservation. However, it is unlikely it will be approved. See Washington Depart. of Ecology, discussion supra. Congress has treated both the states and Indian tribes as equals regarding FIFRA. Yet, the authority of the State to regulate non-Indians on fee lands within the reservation is most likely to be unaffected. The regulation does not infringe upon the tribes right to make their own laws and be ruled by them and imposes only a minimal burden. Also, jurisdiction over the Santee has not been retroceded to the federal government, leaving complete criminal and limited civil jurisdiction with the State of Nebraska.

In conclusion, the Santee Tribe does have the authority to enforce certain chemical regulations under FIFRA. The Santee Indian Tribe does possess an inherent sovereignty over tribal members and Indian trust lands. The current EPA policy also encourages tribal participation in environmental matters. Therefore, should the Santee Indian Tribe seek authority to enforce chemical regulations under FIFRA, the EPA would probably grant such authority in line with their policy of encouraging tribal participation and sovereignty.

However, the extent of such authority would probably be limited to training, certification, and enforcement. Unless the courts interpret an implied authority vested in the tribe, they will be unable to promulgate stricter regulations than those currently in effect.

It is possible that the Santee Tribe would have the authority to enforce FIFRA regulations against non-Indians and on fee lands within the reservation. The chemicals regulated are such that they may threaten the political integrity, economic security, the health or welfare of the tribe. However, the large percentage of reservation land held in fee by non-Indians does weigh against the position of tribal authority over all reservation lands.

The State of Nebraska would not supersede tribal authority if it enacts FIFRA legislation without an express grant of authority from the federal government. However, the state would have control over non-Indians and fee lands within the reservation should it enact FIFRA legislation.

Sincerely,

DON STENBERG

Attorney General

(Signed)

Linda L. Willard

Assistant Attorney General

cc: Patrick J. O'Donnell
Clerk of the Legislature
28-49-6.92

Opinion No. 92098

DATE: August 3, 1992.

SUBJECT: Election questions with respect to the legislative redistricting which must occur in light of Day v. Nelson, 240 Neb. 997, __ N.W.2d __ (1992).

REQUESTED BY: Senator Lowell C. Johnson, Nebraska
State Legislature.

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

In Day v. Nelson, 240 Neb 997, __ N.W.2d __ (1992), the Nebraska Supreme Court held that portions of LB 614, the state's 1991 legislative redistricting bill, were unconstitutional under Article III, Section 5 of the Nebraska Constitution. You have now posed several questions concerning the additional legislative redistricting necessitated by that decision. Your questions are addressed below.

At the outset, we must note that there is little precedent dealing with the questions which you have raised. There are no Nebraska cases directly on point, and we have been able to find little law from other jurisdictions which sheds much direct light on the issues presented. Consequently, while we will give you our best legal assessment as to the correct answers for your questions, courts could rule otherwise in the context of actual litigation.

Your questions were premised upon the assumption that the boundaries of one or more odd-numbered legislative districts, where primary elections were held this past May, would likely be affected by the renewed redistricting process in the wake of the Day decision. In responding to your opinion request, we will make the same assumption as you did in your request letter. We will deal with your questions in inverse order from the way you presented them to us.

First of all, you ask, "Does the Legislature have the authority to redraw legislative districts for the entire state, or is the Legislature

confined to redrawing only those districts necessary to comply with the holding of the Supreme Court?"

In the Day decision, the court stated:

Since it was practicable to follow the county lines of Madison County and the Legislature failed to do so, it follows that §§ 5-219 and 5-241 of L.B. 614 violate article III, § 5, and the appellees should be enjoined.

Day v. Nelson at 1001. Subsequent to the supreme court's decision in Day, we successfully prevailed upon the Lancaster County District Court to limit the injunction which it issued in response to the supreme court's mandate to only Sections 5-219 and 5-241 of LB 614. Sections 5-219 and 5-241 involve legislative districts 18 and 40, even-numbered districts where there are no legislative elections in 1992. Presumably, the limited injunction issued by the district court and the language from the Day opinion quoted above form part of the basis for your first question.

Article III, Section 5 of the Nebraska Constitution does not allow the Legislature to redistrict itself more often than once in every ten years. Exon v. Tiemann, 279 F.Supp. 603 (D. Neb. 1967); Report of the Attorney General, 1971-1972, No. 14 at 30. However, if a particular legislative redistricting plan is constitutionally invalid, the legislature has the authority to enact another plan. Denny v. State, 144 Ind. 503, 42 N.E. 929 (1896). The duty to apportion the state which is imposed upon the legislature is mandatory, and continues until it is properly discharged. Selzer v. Synhorst, 253 Iowa 936, 113 N.W.2d 724 (1962), 81A C.J.S. States § 63. Therefore, the Legislature can and must, at some point, redistrict the state to correct the problems noted in the Day case.

In your opinion request, you stated that one or more odd-numbered legislative districts would likely be redrawn in order to give Madison County its own legislative district in compliance with the Day decision. We agree that it may well be necessary to redraw one or more odd-numbered districts to comply with the Day mandate. Given that necessity to redraw districts in addition to those referenced in the district court's injunction, it seems to us that the Legislature could redraw additional portions of the state, at its discretion. Otherwise, it would become necessary to attempt to somehow draw a line between an acceptable number of changes in legislative districts in response to the Day decision versus an unacceptable number of changes. Moreover, redistricting plans normally involve a number of compromises among competing interests, and a change in one aspect of a plan may have an impact on other aspects of the plan. Therefore, we believe that while the Legislature clearly must do another redistricting plan so as to give Madison County its own legislative district, that plan may also involve

legislative districts across the state other than those specifically listed in the district court's order in the Day case.

Our conclusion in response to your first question is supported by language in Burns v. Richardson, 384 U.S. 73 (1966). In that case, the United States Supreme Court indicated:

. . . Maryland Committee for Fair Representation v. Tawes holds that a court in reviewing an apportionment plan must consider the scheme as a whole. Implicit in this principle is the further proposition that the body creating an apportionment plan in compliance with a judicial order should ordinarily be left free to devise proposals for apportionment on an overall basis.

384 U.S. at 83 (citations omitted).

You next ask, "{i}f a primary election has taken place in a district whose boundaries are changed by the Legislature prior to the general election, is a special primary election required in that district before the general election?" In such an instance, we do not believe that a special election is required, and nomination can be made as directed by the Legislature. Also, as discussed below, there may even be potential problems with conducting a special primary in some circumstances where individuals now hold certificates of nomination from legislative primaries held in May, 1992, if those existing certificates of nomination are invalidated by the special primary process.

A primary election is not a regular election in any sense of the term. Millard v. City of Bay City, 334 Mich. 514, 54 N.W.2d 635 (1952). Rather, it is merely a substitute for a nominating convention, a caucus or a petition effort. 29 C.J.S. Elections § 1(4). Moreover, a primary is not an election to office, but merely a nominating device. Id.

When the nature of primary elections is considered along with that portion of Article III, Section 7 of the Nebraska Constitution which indicates that the manner of election for members of the Legislature ". . . shall be determined by the Legislature," it seems to us that the Legislature is not bound to hold additional primaries in all districts where boundaries are changed as a result of a new redistricting plan. To the contrary, the Legislature has discretion under Article III, Section 7 to determine exactly what the nomination process should be for those new districts. For example, the Legislature could decide to consider the results of the May primary as a nomination from the new districts if those persons nominated in May continue to be residents of the new districts, or the legislature could elect to devise some form of petition process for nomination.

We would also note that there are cases which indicate that a certificate of nomination from a primary entails a valuable property right which may be enforced. Canto v. Parr, 338 S.W.2d 182 (Ct. Civ. App. Tex. 1960); Boyd v. Garrison, 246 Ala. 122, 19 So.2d 385

(1944); Taylor v. Nealon, 132 Tex. 60, 120 S.W.2d 586 (1938); State ex rel. Rinder v. Goff, 129 Wis. 668, 109 N.W. 628 (1906); 29 C.J.S. Elections § 135. Therefore, individuals who hold valid certificates of nomination from legislative primaries held in May, 1992, may have a property right in those nominations. If the Legislature redraws their districts in any new plan so that they remain residents of the district from which they were nominated, it is possible that those individuals could have a right to remain on the November, general election ballot. Obviously, any special primary process which would negate that right could be suspect.

Finally, you ask, "{s}hould such a district {where the Legislature has changed district boundaries after a May primary} be changed so that one or both of the two candidates holding a certificate of election are drawn out of the district, do the candidates remain on the general election ballot?" We believe that the answer to that question is "No."

Article III, Section 8 of the Nebraska Constitution provides, in pertinent part:

No person shall be eligible to the office of member of the Legislature unless on the date of the general election at which he is elected or on the date of his appointment he . . . has resided within the district from which he is elected for the term of one year next before his election, . . .

This constitutional provision obviously requires that candidates from legislative districts be residents of their districts. It seems to us that if a valid redistricting plan is enacted now in special session so that certain individuals who presently hold certificates of nomination from May primaries are geographically removed from their districts, then their certificates of nomination must give way to the constitutional residency requirement. Those individuals could not be elected to the legislative districts specified in their certificates of nomination since they would no longer be residents of those districts. Alternatively, those individuals need not be placed on the ballot for the new legislative districts where they are placed after redistricting since their certificates of nomination, issued previously, were for nomination to different districts. As a result, if there are instances where individuals who hold current certificates of nomination are geographically removed from their districts under a revised redistricting plan, it appears to us that the Legislature will have to devise some form of nomination procedure, by special election or otherwise, so that additional legislative candidates can be selected for those altered districts.

Sincerely yours,
DON STENBERG
Attorney General

(Signed) Dale A. Comer

Assistant Attorney General

cc: Patrick J. O'Donnell
Clerk of the Legislature

MESSAGE FROM THE GOVERNOR

August 3, 1992

Madam President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Madam President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment as the Director of Aeronautics, requiring legislative approval.

APPOINTEE: Kim J. Stevens, 1545 N. 60th Street, Lincoln, NE 68505.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) E. Benjamin Nelson
Governor

REPORTS

Received annual report from the Governor's Policy Research Office of the Geographic Information Systems Steering Committee pursuant to LB 639, 1991.

Received quarterly report from the Nebraska Investment Finance Authority (NIFA) on the use of proceeds of the 1991 A-D Single Family Issue pursuant to Neb. Rev. Stat. § 58-270(4).

GENERAL FILE

LEGISLATIVE BILL 2. Title read. Considered.

Advanced to E & R for review with 32 ayes, 0 nays, 6 present and not voting, and 11 excused and not voting.

LEGISLATIVE BILL 1. Title read. Considered.

Advanced to E & R for review with 25 ayes, 7 nays, 8 present and not voting, and 9 excused and not voting.

LEGISLATIVE BILL 3. Title read. Considered.

Standing Committee amendment, AM014S, found in this day's Journal, was considered.

Mr. Moore offered the following amendment to the Standing Committee amendment:

AM016S

(Amendments to Standing Committee amendments, AM014S)

1 1. Insert the following new sections:

2 "Sec. 3. Sales and use tax shall not be
3 imposed on the gross receipts from the sale, lease, or
4 rental of and the storage, use, or other consumption in
5 this state of depreciable agricultural machinery and
6 equipment used in commercial agriculture.

7 Sec. 4. The exemption granted in section 3 of
8 this act shall be conditioned upon filing requirements
9 for the exemption as imposed by the Tax Commissioner.
10 The requirements imposed by the Tax Commissioner shall
11 be related to (1) ensuring that the purchaser qualifies
12 for the exemption and (2) ensuring that relevant
13 information on the property purchased is available to
14 local government officials for personal property tax
15 collection purposes. Any information received by the
16 Tax commissioner pursuant to the requirements may be
17 disclosed to any other tax official in this state. Any
18 person who fails to comply with the requirements of this
19 section shall be guilty of a Class V misdemeanor.

20 Sec. 5. That section 77-2701, Revised
1 Statutes Supplement, 1991, as amended by Laws 1992, LB
2 871, section 3, and Laws 1992, LB 1063, section 180, be
3 amended to read as follows:

4 77-2701. Sections 77-2701 to 77-27,135 and
5 sections 4 to 24 and 26 to 59 of this act and section
6 181 of this act and sections 3 and 4 of this act shall
7 be known and may be cited as the Nebraska Revenue Act of
8 1967.

9 Sec. 6. That Laws 1992, LB 1063, section 181,
10 be amended to read as follows:

11 Sec. 181. (1) Any purchaser of depreciable
12 agricultural machinery or equipment purchased on or
13 after January 1, 1992, and before January 1, 1993, for
14 use in commercial agriculture may apply for a refund of
15 all of the Nebraska sales or use taxes and all of the
16 local option sales or use taxes paid on the machinery or
17 equipment.

18 (2) The purchaser shall file a claim within
19 three years after the date of purchase with the Tax
20 Commissioner pursuant to section 77-2708. The
21 information provided on a tax refund claim allowed under
22 this section may be disclosed to any other tax official
23 of this state."

24 2. On page 3, line 3, before "and" insert
1 "section 77-2701, Revised Statutes Supplement, 1991, as
2 amended by Laws 1992, LB 871, section 3, and Laws 1992,
3 LB 1063, section 180,"; and in line 4 strike "section
4 47" and insert "sections 47 and 181".

5 3. Renumber the remaining sections
6 accordingly.

Mr. Chizek asked unanimous consent to be excused until he returns.
No objections. So ordered.

Mrs. Nelson moved the previous question. The question is, "Shall the
debate now close?" The motion prevailed with 27 ayes, 0 nays, and 22
not voting.

Mrs. Labedz asked unanimous consent to be excused until she returns.
No objections. So ordered.

The Moore amendment was adopted with 24 ayes, 9 nays, 7 present
and not voting, and 9 excused and not voting.

The Standing Committee amendment, as amended, was adopted with
25 ayes, 12 nays, 3 present and not voting, and 9 excused and not
voting.

Advanced to E & R for review with 25 ayes, 14 nays, 2 present and
not voting, and 8 excused and not voting.

SELECT COMMITTEE REPORT Enrollment and Review

LEGISLATIVE BILL 2. Placed on Select File.

(Signed) Eric Will, Chairperson

REFERENCE COMMITTEE REPORT

The Legislative Council Executive Board submits the attached report on the referral of a Governor appointment.

Government, Military and Veterans Affairs
Kim J. Stevens - Director of Aeronautics

(Signed) Jerome Warner, Chairperson
Legislative Council
Executive Board

VISITORS

Visitors to the Chamber were Dick and Marie Johns from Hawaii; and Jerry, Jamie, Pam, and Teresa Crable from Gering.

ADJOURNMENT

At 12:20 p.m., on a motion by Speaker Baack, the Legislature adjourned until 10:00 a.m., Thursday, August 6, 1992.

Patrick J. O'Donnell
Clerk of the Legislature



printed on recycled paper

THIRD DAY - AUGUST 6, 1992

LEGISLATIVE JOURNAL

THIRD DAY - AUGUST 6, 1992
LEGISLATIVE JOURNAL
NINETY-SECOND LEGISLATURE
SECOND SPECIAL SESSION

THIRD DAY

Legislative Chamber, Lincoln, Nebraska
Thursday, August 6, 1992

Pursuant to adjournment, the Legislature met at 10:00 a.m., President Moul presiding.

PRAYER

The prayer was offered by Rev. Harland Johnson, Chaplain Coordinator.

ROLL CALL

The roll was called and all members were present except Messrs. L. Johnson, Kristensen, Landis, Moore, Withem, and Mrs. Rasmussen who were excused; and Messrs. R. Johnson, Morrissey, and Mrs. Pirsch who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the second day was approved.

SELECT COMMITTEE REPORTS
Enrollment and Review

LEGISLATIVE BILL 1. Placed on Select File as amended.
E & R amendment to LB 1:
AM5300

- 1 1. On page 1, line 10, strike "77-103,".
- 2 2. On page 2, line 21, strike "44,".
- 3 3. On page 3, line 2, after "sections" insert
- 4 "77-103,;" and in line 7 after "sections" insert "44,".
- 5 4. On page 4, line 19, strike "change"; and

- 6 strike line 20.
 7 5. On page 70, line 22, strike "Reissue"; and
 8 in line 23 strike "of Nebraska, 1943" and insert
 9 "Supplement, 1991".
 10 6. On page 222, line 19, strike "77-103,".
 11 7. On page 223, line 4, strike "44,"; in line
 12 6 after "sections" insert "77-103,"; and in line 9 after
 13 "sections" insert "44,".

LEGISLATIVE BILL 3. Placed on Select File as amended.

E & R amendment to LB 3:

AM5301

- 1 1. Strike the original sections and all
 2 amendments thereto and insert the following new
 3 sections:
 4 "Section 1. That section 77-1229, Reissue
 5 Revised Statutes of Nebraska, 1943, as amended by Laws
 6 1992, LB 1063, section 98, be amended to read as
 7 follows:
 8 77-1229. Every person required by section
 9 77-1201 to list taxable tangible personal property shall
 10 list such property ~~upon the~~ on forms prescribed by the
 11 Tax Commissioner. ~~The forms shall be~~ and furnished by
 12 the county assessor. On or before March 1 of each year,
 13 the county assessor shall mail a form to each person he
 14 or she knows or has reason to believe may be required to
 15 list taxable tangible personal property. When and when
 16 completed, the form shall be signed by ~~each~~ the person
 17 or his or her agent and ~~be~~ filed with the county
 18 assessor on or before May 1 of each year. A person who
 19 is required to list taxable tangible personal property
 20 shall not be excused from filing the form by virtue of
 21 not having received the form by mail. If a
 2 ~~constitutional amendment amending Article VIII of the~~
 3 ~~Constitution of Nebraska is adopted in 1992, the forms~~
 4 ~~shall be filed on or before June 1 for 1992 and on or~~
 5 ~~before May 1 for all other years. If Article VIII of~~
 6 ~~the Constitution of Nebraska is not amended in 1992, the~~
 7 ~~forms shall be filed on or before June 1 for 1992 and on~~
 8 ~~or before March 1 for all other years. If severe~~
 9 weather conditions or natural disaster prohibits the
 10 person from complying with this section, the county
 11 assessor may allow an extension without application but
 12 not more than fifteen days.
- 12 Sec. 2. That Laws 1992, LB 1063, section 47,

13 be amended to read as follows:

14 Sec. 47. Nebraska adjusted basis shall mean
15 the adjusted basis of property as determined under the
16 Internal Revenue Code of 1986, as amended, as the code
17 exists on the assessment date, increased by the total
18 amount allowed under the code for depreciation or
19 amortization or pursuant to an election to expense
20 depreciable property under section 179 of the code, as
21 amended, and decreased by the amount of state and local
22 sales and use taxes paid in Nebraska with respect to the
23 acquisition of the property.

24 Sec. 3. Sales and use taxes shall not be
1 imposed on the gross receipts from the sale, lease, or
2 rental of and the storage, use, or other consumption in
3 this state of depreciable agricultural machinery and
4 equipment used in commercial agriculture.

5 Sec. 4. The exemption granted in section 3 of
6 this act shall be conditioned upon filing requirements
7 for the exemption as imposed by the Tax Commissioner.
8 The requirements imposed by the Tax Commissioner shall
9 be related to (1) ensuring that the purchaser qualifies
10 for the exemption and (2) ensuring that relevant
11 information on the property purchased is available to
12 local governmental officials for personal property tax
13 collection purposes. Any information received by the
14 Tax Commissioner pursuant to the requirements may be
15 disclosed to any other tax official in this state. Any
16 person who fails to comply with the requirements of this
17 section shall be guilty of a Class V misdemeanor.

18 Sec. 5. That section 77-2701, Revised
19 Statutes Supplement, 1991, as amended by Laws 1992, LB
20 871, section 3, and Laws 1992, LB 1063, section 180, be
21 amended to read as follows:

22 77-2701. Sections 77-2701 to 77-27,135 and
23 sections 4 to 24 and 26 to 59 of this act and section
24 181 of this act and sections 3 and 4 of this act shall
1 be known and may be cited as the Nebraska Revenue Act of
2 1967.

3 Sec. 6. That Laws 1992, LB 1063, section 181,
4 be amended to read as follows:

5 Sec. 181. (1) Any purchaser of depreciable
6 agricultural machinery or equipment purchased on or
7 after January 1, 1992, and before January 1, 1993, for
8 use in commercial agriculture may apply for a refund of
9 all of the Nebraska sales or use taxes and all of the

10 local option sales or use taxes paid on the machinery or
11 equipment.

12 (2) The purchaser shall file a claim within
13 three years after the date of purchase with the Tax
14 Commissioner pursuant to section 77-2708. The
15 information provided on a tax refund claim allowed under
16 this section may be disclosed to any other tax official
17 of this state.

18 Sec. 7. This act shall become operative on
19 January 1, 1993.

20 Sec. 8. That original section 77-1229,
21 Reissue Revised Statutes of Nebraska, 1943, as amended
22 by Laws 1992, LB 1063, section 98, section 77-2701,
23 Revised Statutes Supplement, 1991, as amended by Laws
24 1992, LB 871, section 3, and Laws 1992, LB 1063, section
1 180, and Laws 1992, LB 1063, sections 47 and 181, are
2 repealed."

3 2. On page 1, line 1, after "amend" insert
4 "section 77-1229, Reissue Revised Statutes of Nebraska,
5 1943, as amended by Laws 1992, LB 1063, section 98,";
6 and strike beginning with the semicolon in line 4
7 through line 8 and insert ", and Laws 1992, LB 1063,
8 sections 47 and 181; to change provisions related to
9 listing taxable tangible personal property; to redefine
10 a term; to provide an exemption from the sales and use
11 taxes; to provide filing requirements; to provide a
12 penalty; to limit the applicability of refund
13 provisions; to harmonize provisions; to provide an
14 operative date; and to repeal the original sections."

(Signed) Eric Will, Chairperson

UNANIMOUS CONSENT - Add Cointroducer

Mr. L. Johnson asked unanimous consent to have his name added as cointroducer to LB 3. No objections. So ordered.

REPORT

Received report from the Nebraska Business Development Center pursuant to LB 736, 1987.

SELECT FILE

LEGISLATIVE BILL 1. E & R amendment, AM5300, found in this day's Journal, was adopted.

Mr. Lamb withdrew the Lamb et al. pending amendment, AM002S, found in the Journal on page 60, to LB 1.

Advanced to E & R for engrossment.

EASE

The Legislature was at ease from 10:27 a.m. until 10:50 a.m.

STANDING COMMITTEE REPORTS Government, Military and Veterans Affairs

LEGISLATIVE BILL 7. Placed on General File as amended.
Standing Committee amendment to LB 7:

AM022S

1 1. Strike original sections 1 to 8 and insert
2 the following new sections:
3 "Section 1. That section 50-1101, Revised
4 Statutes Supplement, 1991, be amended to read as
5 follows:
6 50-1101. The State of Nebraska is hereby
7 divided into forty-nine legislative districts. Each
8 district shall be entitled to one member in the
9 Legislature. The legislative districts described in
10 sections 50-1102 to 50-1150 and sections 4 and 6 of this
11 act are based on the 1990 Census of Population by the
12 United States Department of Commerce, Bureau of the
13 Census.

14 Sec. 2. That section 50-1117, Revised
15 Statutes Supplement, 1991, be amended to read as
16 follows:

17 50-1117. District No. 16 shall contain the
18 county of Washington, that part of Burt County not
19 included in legislative district 17, and that part of
20 Cuming County not included in legislative districts 17,
21 18, and 23.

1 Sec. 3. That section 50-1118, Revised
2 Statutes Supplement, 1991, be amended to read as
3 follows:

4 50-1118. District No. 17 shall contain the
5 counties of Dakota and Thurston, that part of Cuming
6 County which includes the townships of Bancroft,

7 Cleveland, and Grant; and Blaine the village of
8 Bancroft, that part of Burt County which includes that
9 part of the precinct of Decatur containing a portion of
10 the Omaha Indian Reservation, that part of Dixon County
11 which includes the precincts of Newcastle, Silver Creek,
12 Ponca, and Otter Creek, and the village of Ponca, and
13 that part of Wayne County not included in legislative
14 district 19 which includes the precincts of Logan,
15 Hunter, Wakefield City and the city of Wayne.

16 Sec. 4. District No. 18 shall contain the
17 counties of Cedar, Stanton, and Pierce, those parts of
18 Wayne and Dixon counties not included in legislative
19 district 17, that part of Cuming County which includes
20 the township of Blaine, and that part of Knox County
21 which includes the township of Lincoln and the village
22 of Wausa.

23 Sec. 5. That section 50-1120, Revised
24 Statutes Supplement, 1991, be amended to read as
1 follows:

2 50-1120. District No. 19 shall contain the
3 county of Madison. counties of Dixon and Cedar, that
4 part of Wayne County which includes the precincts of
5 Hoskins, Garfield, Sherman, Deer Creek, and Wilbur, the
6 city of Sholes, the city of Carroll, and the city of
7 Hoskins, and those parts of Pierce and Knox counties not
8 included in legislative district 40.

9 Sec. 6. District No. 40 shall contain the
10 counties of Boyd, Holt, and Antelope and that part of
11 Knox County not included in legislative district 18.

12 Sec. 7. That section 50-1151, Revised
13 Statutes Supplement, 1991, be amended to read as
14 follows:

15 50-1151. The precincts, townships, and cities
16 mentioned in sections 50-1102 to 50-1150 and sections 4
17 and 6 of this act are the precincts, townships, and
18 cities set out in the 1990 Census of Population by the
19 United States Department of Commerce, Bureau of the
20 Census. References to any city or village or the limits
21 thereof or to any precincts within or without any city
22 or village shall mean the limits of such city, village,
23 or precinct as they existed on April 1, 1990. References
24 to streets, roads, boulevards, avenues, highways, or
1 other public ways, railroad rights-of-way, creeks, or
2 rivers shall mean the center line thereof unless
3 otherwise specifically provided.

- 4 Sec. 8. That section 50-1152, Revised
5 Statutes Supplement, 1991, as amended by Laws 1992, LB
6 946, section 1, be amended to read as follows:
7 50-1152. Sections ~~50-1101 to 50-1152~~ 50-1102
8 to 50-1116, 50-1121 to 50-1140, and 50-1142 to 50-1150
9 shall become operative on April 16, 1992, except that
10 members of the Legislature from the odd-numbered
11 districts mentioned in such sections ~~50-1101 to 50-1152~~
12 shall be nominated at the primary election in 1992 and
13 elected at the general election in November 1992 for the
14 term commencing January 6, 1993. This act shall become
15 operative on the effective date of this act. The
16 members of the Legislature elected or appointed prior to
17 ~~April 16, 1992~~ the effective date of this act, shall
18 represent the newly established districts for the
19 balance of their terms, with each member representing
20 the same numbered district as prior to ~~April 16, 1992~~
21 the effective date of this act.
22 Sec. 9. That original sections 50-1101,
23 50-1117, 50-1118, 50-1120, and 50-1151, Revised Statutes
24 Supplement, 1991, and section 50-1152, Revised Statutes
1 Supplement, 1991, as amended by Laws 1992, LB 946,
2 section 1, and also sections 50-1119 and 50-1141,
3 Revised Statutes Supplement, 1991, are repealed."
4 2. Renumber the remaining section
5 accordingly.

The Committee on Government, Military and Veterans Affairs desires to report favorably upon the appointment listed below. The Committee suggests the appointment be confirmed by the Legislature and suggests a record vote.

Robert W. Shively - Nebraska Accountability and Disclosure Commission

VOTE: Aye: Senators Conway, Bohlke, Coordsen, Robak, Schimek, and Schrock. Nay: none. Not Voting: Senator Lindsay. Absent: Senator Withem.

(Signed) Gerald Conway, Chairperson

NOTICE OF COMMITTEE HEARING
Government, Military and Veterans Affairs

Governor Appointments Monday, August 10, 1992 1:00 p.m.
James J. Riskowski - Crime Victims Reparation Committee
Jack D. Campbell - Crime Victims Reparation Committee
Kim J. Stevens - Director of Aeronautics

(Signed) Gerald Conway, Chairperson

GENERAL FILE

LEGISLATIVE BILL 7. Title read. Considered.

Standing Committee amendment, AM022S, found in this day's Journal, was considered.

SPEAKER BAACK PRESIDING

Messrs. R. Johnson and Wesely asked unanimous consent to be excused until they return. No objections. So ordered.

Pending.

STANDING COMMITTEE REPORTS

Health and Human Services

The Committee on Health and Human Services desires to report favorably upon the appointments listed below. The Committee suggests the appointments be confirmed by the Legislature and suggests a record vote.

Dr. Mark Kellough - State Board of Health
Violet Fickel - Foster Care Review Board
Julie Dahlke - Commission for the Hearing Impaired
Linsay Darnall - Commission for the Hearing Impaired

VOTE: Aye: Senators Byars, Cudaback, Dierks, Schellpeper, and Wesely. Nay: none. Absent: Senators Beyer and Rasmussen.

(Signed) Don Wesely, Chairperson

Natural Resources

The Committee on Natural Resources desires to report favorably upon the appointments listed below. The Committee suggests the appointments be confirmed by the Legislature and suggests a record vote.

Gary S. Goldberg - Ethanol Authority and Development Board
Robert H. Warrick - Environmental Control Council

VOTE: Aye: Senators Beutler, Elmer, Hartnett, Horgan, R. Johnson, and Morrissey. Nay: none. Not Voting: Senator Lamb. Absent: Senator Schmit.

(Signed) Rod Johnson, Chairperson

REPORTS

Received semi-annual report from the Department of Environmental Control on Program #518, Wastewater Construction Grants Program, in accordance with the provisions of Section 81-1533 of the Reissue Revised Statutes of Nebraska.

Received semi-annual report from the Department of Environmental Control on Program #523, Small Town Grants Program, in accordance with the provisions of Section 81-15,153 of the Statutes of Nebraska.

VISITORS

Visitors to the Chamber were Mr. and Mrs. Harlan Hendrick from David City; and 23 students and sponsor from Southeast Community College.

RECESS

At 11:50 a.m., on a motion by Mr. Byars, the Legislature recessed until 1:30 p.m.

AFTER RECESS

The Legislature reconvened at 1:30 p.m., Speaker Baack presiding.

ROLL CALL

The roll was called and all members were present except Messrs. L. Johnson, Kristensen, Landis, Lynch, Moore, Withem, and Mrs. Rasmussen who were excused; and Messrs. Beyer, R. Johnson, Morrissey, Rogers, Schmit, Mmes. Labedz, Pirsch, and Robak who were excused until they arrive.

PRESIDENT MOUL PRESIDING

UNANIMOUS CONSENT - Print in Journal

Mr. Hall asked unanimous consent to print the following amendment to LB 3 in the Journal. No objections. So ordered.

AM021S

(Amendments to E&R amendments, AM5301)

- 1 1. Strike sections 3 to 6.
- 2 2. On page 4, strike beginning with the
- 3 second "section" in line 22 through line 24.
- 4 3. On page 5, line 1, strike "180," and
- 5 strike "sections 47 and 181" and insert "section 47".
- 6 4. Renumber the remaining sections
- 7 accordingly.

GENERAL FILE

LEGISLATIVE BILL 7. The pending Standing Committee amendment, AM022S, found in the Journal on page 84 and considered on page 87, was renewed.

Mr. Hefner offered the following amendment to the Standing Committee amendment:

FA1S2

- 1 1. Strike original sections 2 to 5 of the Standing
- 2 Committee amendment and insert
- 3 the following new sections:
- 4 "Sec. 2. That section 50-1118, Revised
- 5 Statutes Supplement, 1991, be amended to read as
- 6 follows:
- 7 50-1118. District No. 17 shall contain the
- 8 counties of Dakota and Thurston, that part of Dixon
- 9 County which includes the precinct of Emerson and the
- 10 city of Wakefield, that part of Cuming County which
- 11 includes the townships of Bancroft, Cleveland, Grant,
- 12 and Blaine, that part of Burt County containing a
- 13 portion of the Omaha Indian Reservation, and that part
- 14 of Wayne County not included in legislative district 19
- 15 which includes the precincts of Hunter, Logan, Leslie,
- 16 Wakefield City, and Plum Creek and the city of Wayne.
- 17 Sec. 3. District No. 18 shall contain the
- 18 county of Madison.
- 19 Sec. 4. That section 50-1120, Revised
- Statutes Supplement, 1991, be amended to read as

20 follows:

21 50-1120. District No. 19 shall contain the
 1 counties of ~~Stanton~~ ~~Dixon~~ and Cedar, that part of ~~Wayne~~
 2 ~~Knox~~ County which includes the precincts of ~~Hoskins~~,
 3 ~~Garfield~~, ~~Sherman~~, ~~Deer Creek~~, and ~~Wilbur~~, the city of
 4 ~~Sholes~~, the city of ~~Carroll~~, and the city of ~~Hoskins~~,
 5 and those parts of ~~Pierce~~ and ~~Knox~~ counties Herrick,
 6 Addison, Peoria, North Frankfort, Frankfort, Eastern,
 7 Dolphin, Dowling, and Lincoln, the city of Crofton, and
 8 the village of Wausa, those parts of Dixon and Wayne
 9 counties not included in legislative district 17, and
 10 that part of Pierce County not included in legislative
 11 district 40.

12 Sec. 5. District No. 40 shall contain the
 13 counties of Boyd, Holt, and Antelope, that part of
 14 Pierce County which includes the precincts of North Dry
 15 Creek, South Dry Creek, Willow Creek, Mills, Thompson,
 16 Foster, Clover Valley, and Blaine and the city of
 17 Plainview, and that part of Knox County not included in
 18 legislative district 19."

MR. WARNER PRESIDING

Mr. Hefner moved for a call of the house. The motion prevailed with 18 ayes, 0 nays, and 31 not voting.

Mr. Hefner requested a roll call vote on his amendment.

Voting in the affirmative, 5:

Bernard- Stevens	Hefner	Pirsch	Schimek	Wehrbein
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Voting in the negative, 25:

Abboud	Conway	Elmer	Horgan	Schellpeper
Baack	Coordsen	Haberman	Lindsay	Warner
Beutler	Crosby	Hall	Peterson	Wesely
Bohlke	Cudaback	Hartnett	Robak	Wickersham
Byars	Dierks	Hillman	Robinson	Will

Present and not voting, 6:

Ashford	Labeledz	Lamb	Nelson	Schrock
Chizek				

Absent and not voting, 1:

Chambers

Excused and not voting, 12:

Beyer	Kristensen	Moore	Rasmussen	Schmit
Johnson, L.	Landis	Morrissey	Rogers	Withem
Johnson, R.	Lynch			

The Hefner amendment lost with 5 ayes, 25 nays, 6 present and not voting, 1 absent and not voting, and 12 excused and not voting.

The Chair declared the call raised.

SPEAKER BAACK PRESIDING

The Standing Committee amendment was adopted with 25 ayes, 4 nays, 8 present and not voting, and 12 excused and not voting.

Mr. Wesely asked unanimous consent to be excused until he returns.
No objections. So ordered.

Mr. Hefner requested a record vote on the advancement of the bill.

Voting in the affirmative, 26:

Abboud	Chizek	Haberman	Lindsay	Schellpeper
Ashford	Conway	Hall	Nelson	Schmit
Baack	Coordsen	Hartnett	Peterson	Warner
Beutler	Dierks	Hillman	Robak	Wickersham
Bohlke	Elmer	Labeledz	Robinson	Will
Byars				

Voting in the negative, 9:

Bernard-	Crosby	Horgan	Pirsch	Schrock
Stevens	Hefner	Lamb	Schimek	Wehrbein

Present and not voting, 2:

Chambers Cudaback

Excused and not voting, 12:

Beyer	Kristensen	Moore	Rasmussen	Wesely
Johnson, L.	Landis	Morrissey	Rogers	Withem
Johnson, R.	Lynch			

Advanced to E & R for review with 26 ayes, 9 nays, 2 present and not voting, and 12 excused and not voting.

STANDING COMMITTEE REPORTS

Government, Military and Veterans Affairs

LEGISLATIVE BILL 15. Placed on General File.

LEGISLATIVE BILL 9. Placed on General File as amended.
Standing Committee amendment to LB 9:
AM024S

- 1 1. On page 2, line 21, strike "August 31" and
- 2 insert "the last Friday in August".
- 3 2. On page 3, line 7, after "filled" insert
- 4 ", except that if the boundaries of a legislative
- 5 district are changed by the Legislature between the
- 6 primary and general elections, the petitions must bear
- 7 the signatures of registered voters equal to at least
- 8 two percent of the total population of the State of
- 9 Nebraska according to the last federal decennial census
- 10 divided by the number of legislative districts"; and in
- 11 line 12 after the first "district" insert ", except that
- 12 if the boundaries of a legislative district are changed
- 13 by the Legislature between the primary and general
- 14 elections, signatures may be obtained in any one or more
- 15 counties comprising the district".

(Signed) Gerald Conway, Chairperson

GENERAL FILE

LEGISLATIVE BILL 15. Title read. Considered.

Mr. Haberman requested a ruling of the Chair as to whether LB 15 is within the Proclamation as issued by the Governor.

The Chair declined to rule inasmuch as the Legislature will determine issues to be considered during Special Session in light of the Proclamation issued by the Governor.

Messrs. Hefner, Ashford, Abboud, Schmit, and Mrs. Labedz asked unanimous consent to be excused until they return. No objections. So ordered.

Mr. Haberman moved to indefinitely postpone LB 15.

Mr. Haberman moved for a call of the house. The motion prevailed with 8 ayes, 0 nays, and 41 not voting.

Mr. Haberman requested a roll call vote on his motion to indefinitely postpone.

Voting in the affirmative, 2:

Haberman	Wesely
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Voting in the negative, 21:

Baack	Conway	Elmer	Peterson	Schrock
Beutler	Coordsen	Hall	Pirsch	Warner
Bohlke	Crosby	Horgan	Robak	Wehrbein
Byars	Cudaback	Nelson	Schimek	Will
Chizek				

Present and not voting, 9:

Bernard-	Dierks	Hillman	Lindsay	Schellpeper
Stevens	Hartnett	Lamb	Robinson	Wickersham

Absent and not voting, 1:

Chambers

Excused and not voting, 16:

Abboud	Johnson, L.	Labedz	Moore	Rogers
Ashford	Johnson, R.	Landis	Morrissey	Schmit
Beyer	Kristensen	Lynch	Rasmussen	Withem
Hefner				

The Haberman motion to indefinitely postpone lost with 2 ayes, 21 nays, 9 present and not voting, 1 absent and not voting, and 16 excused and not voting.

The Chair declared the call raised.

Advanced to E & R for review with 25 ayes, 4 nays, 6 present and not voting, and 14 excused and not voting.

LEGISLATIVE BILL 9. Title read. Considered.

Standing Committee amendment, AM024S, found in this day's Journal, was adopted with 25 ayes, 0 nays, 10 present and not voting, and 14 excused and not voting.

Mr. Lamb asked unanimous consent to be excused until he returns. No objections. So ordered.

Advanced to E & R for review with 25 ayes, 0 nays, 9 present and not voting, and 15 excused and not voting.

UNANIMOUS CONSENT - Print in Journal

Messrs. Lamb, Haberman, Wickersham, Elmer, Byars, Coordsen, Schmit, Hefner, R. Johnson, Schrock, Cudaback, Wehrbein, Schellpeper, Dierks, Peterson, Beyer, Robinson, Mmes. Bohlke, and Robak asked unanimous consent to print the following amendment to LB 3 in the Journal. No objections. So ordered.

AM020S

(Amendments to E & R amendments, AM5301)

- 1 1. Insert the following new sections:
- 2 "Section 1. That section 77-202, Revised
- 3 Statutes Supplement, 1991, as amended by Laws 1992, LB
- 4 1063, section 53, be amended to read as follows:
- 5 77-202. (1) The following property shall be
- 6 exempt from property taxes:
- 7 (a) Property of the state and its governmental
- 8 subdivisions;
- 9 (b) Property owned by and used exclusively for
- 10 agricultural and horticultural societies;
- 11 (c) Property owned by educational, religious,
- 12 charitable, or cemetery organizations and used
- 13 exclusively for educational, religious, charitable, or
- 14 cemetery purposes, when such property is not (i) owned
- 15 or used for financial gain or profit to either the owner
- 16 or user, (ii) used for the sale of alcoholic liquors for
- 17 more than twenty hours per week, or (iii) owned or used
- 18 by an organization which discriminates in membership or
- 19 employment based on race, color, or national origin.

20 For purposes of this subdivision, educational
1 organization shall mean an institution operated
2 exclusively for the purpose of offering regular courses
3 with systematic instruction in academic, vocational, or
4 technical subjects or a museum or historical society
5 operated exclusively for the benefit and education of
6 the public. For purposes of this subdivision,
7 charitable organization shall mean an organization
8 operated exclusively for the purpose of the mental,
9 social, or physical benefit of the public or an
10 indefinite number of persons; and

11 (d) Household goods and personal effects not
12 owned or used for financial gain or profit to either the
13 owner or user.

14 (2) The increased value of land by reason of
15 shade and ornamental trees planted along the highway
16 shall not be taken into account in the valuation of
17 land.

18 ~~(3) If a constitutional amendment amending~~
19 ~~Article VIII of the Constitution of Nebraska is adopted~~
20 ~~in 1992, tangible~~ Tangible personal property which is
21 not depreciable tangible personal property as defined in
22 section 48 of this act shall be exempt from property
23 tax.

24 (4) Vehicles registered pursuant to section
1 60-305.09 and for which the registration fees prescribed
2 in such section have been paid shall be exempt from
3 payment of property taxes.

4 ~~(5) If a constitutional amendment amending~~
5 ~~Article VIII of the Constitution of Nebraska is adopted~~
6 ~~in 1992, business~~ Business and agricultural inventory
7 shall be exempt from the personal property tax.

8 (6) Any personal property exempt pursuant to
9 subsection (2) of section 77-4105 shall be exempt from
10 the personal property tax.

11 (7) Livestock shall be exempt from the
12 personal property tax.

13 Sec. 10. That original section 77-202,
14 Revised Statutes Supplement, 1991, as amended by Laws
15 1992, LB 1063, section 53, is repealed."

16 2. On page 3, line 5, strike "3" and insert
17 "4"; and in line 24 strike "3 and 4" and insert "4 and
18 5".

19 3. On page 4, line 18, strike "This" and
20 insert "Sections 1 and 10 of this act shall become

21 operative on January 1, 1992. Sections 2 to 7 and 9 of
22 this"; and in line 19 after the period insert "The other
23 section of this act shall become operative on its
24 effective date."

1 4. Renumber the remaining sections
2 accordingly.

ADJOURNMENT

At 3:43 p.m., on a motion by Mr. Hall, the Legislature adjourned until
9:00 a.m., Friday, August 7, 1992.

Patrick J. O'Donnell
Clerk of the Legislature

FOURTH DAY - AUGUST 7, 1992

LEGISLATIVE JOURNAL

**NINETY-SECOND LEGISLATURE
SECOND SPECIAL SESSION**

FOURTH DAY

Legislative Chamber, Lincoln, Nebraska
Friday, August 7, 1992

Pursuant to adjournment, the Legislature met at 9:02 a.m., President Moul presiding.

PRAYER

The prayer was offered by Senator Roger R. Wehrbein.

ROLL CALL

The roll was called and all members were present except Messrs. Beyer, L. Johnson, R. Johnson, Kristensen, Landis, Withem, and Mrs. Rasmussen who were excused; and Messrs. Abboud, Ashford, Bernard-Stevens, Beutler, Chambers, Hartnett, Morrissey, Mmes. Pirsch, and Robak who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the third day was approved.

**SELECT COMMITTEE REPORTS
Enrollment and Review**

LEGISLATIVE BILL 7. Placed on Select File as amended.
E & R amendment to LB 7:
AM5303

- 1 1. In the Standing Committee amendments,
- 2 AM022S, on page 2, line 12, strike the second comma; and
- 3 in line 15 after the comma insert "and".
- 4 2. On page 1, line 2, after the first comma
- 5 insert "50-1117,".

LEGISLATIVE BILL 15. Placed on Select File.

LEGISLATIVE BILL 9. Placed on Select File as amended.

E & R amendment to LB 9:

AM5302

1. On page 2, line 11, strike "(a)".

Correctly Engrossed

The following bill was correctly engrossed: 1.

(Signed) Eric Will, Chairperson

REPORT OF REGISTERED LOBBYISTS

In accordance with LB 987, passed in the 1976 session of the Legislature and amended by LB 4 and LB 41 in the 1977 session of the Legislature, the attached is a list of all Lobbyists who have registered as of August 6, 1992. Further lists listing additional lobbyists who have registered will be filed weekly.

(Signed) Patrick J. O'Donnell
Clerk of the Legislature

Anderson, Shannon M. - Omaha
(Withdrawn 07/29/92)

Bergman, Janet S. - Lincoln

Botsch, Barbara A. - Omaha

(Withdrawn 06/30/92)

Cavanaugh, James P. - Omaha

Conradt, Mary - Lincoln

(Withdrawn 06/23/91)

Doyle, Larry - Bellevue

(Withdrawn 01/06/92)

Edmunds, Jerry G. - Lincoln

(Withdrawn 04/15/92)

Frey, John O. - Lincoln

(Withdrawn 04/14/92)

Hoke, Fred A. - Lincoln

(Withdrawn 06/30/92)

Huff, Martin B. - Lincoln

Johnson, Vard - Omaha

(Withdrawn 05/16/92)

Jonske, Nancy - Lincoln

(Withdrawn 09/11/91)

Physicians Mutual Insurance Co.

Nebraska Health Care Association

Greater Omaha Chamber of Commerce

Peoples Natural Gas

(Withdrawn 5/31/92)

Nebraska Congress of Parents and
Teachers

American Irish Political Education
Committee

Transportation Communications
International Union

Lincoln Restaurant Association

Nebraska Council of School
Administrators

Nebraska Manufactured Housing
Association

Metropolitan Omaha Builders
Association

Nebraska Congress of Parents and
Teachers

Monaghan, Thomas J. - Omaha	Scientific Games Inc.
Nelson, Richard A. - Yorkville, IL (Withdrawn 03/20/92)	Merck Sharp & Dohme
Odvody, Marilyn - Morse Bluff (Withdrawn 04/14/92)	Saunders County Livestock Assoc.
O'Hara & Associates	
O'Hara, Paul V. - Lincoln	Enron Corporation (Withdrawn 05/01/92)
	International Gamco, Inc. (Withdrawn 05/01/92)
	Nebraska Dental Association (Withdrawn 07/22/92)
	Saunders County Livestock Association (Withdrawn 04/14/92)
	Greater Omaha Chamber of Commerce
	Citizens for a True State Lottery
Peetz, Natalie - Omaha	
Pistillo, Donald J. - Omaha (Withdrawn 06/01/92)	
Radcliffe and Associates	
Radcliffe, Walter H. - Lincoln	Nebraska Manufacturing Housing Association (Withdrawn 08/05/92)
	College Park Committee (Withdrawn 04/15/92)
	Concerned Livestock Feeders & Producers Against Brand Inclusion for Howard County (Withdrawn 04/15/92)
	Nebraska Health Care Association
Rasmussen, Dennis - Lincoln	
	Association for Children for Enforcement of Support (ACES)
	Nebraska Civil Liberties Union
Ratigan, Bonnie - Omaha (Withdrawn 05/08/92)	
Reents, Kathy - Council Bluffs, IA (Withdrawn 05/03/92)	Nebraska Republican Party
Schatz, William R. - Lincoln (Withdrawn 06/25/92)	United Transportation Union
Sellentini, Jerry L. - Lincoln (Withdrawn 06/30/92)	Nebraska Dental Assistants Association
Timmermann, Dennis F. - Lincoln (Withdrawn 06/09/92)	Student Government at UNO
Trimpey, Joan L. - Omaha (Withdrawn 05/01/92)	Nebraska Motorcyclist Coalition
Vanevenhoven, Mark - Omaha (Withdrawn 04/15/92)	Nebraska Health Care Association
Vickers, Tom - Lincoln (Withdrawn 04/13/92)	
Wreed, V. Delight - Lincoln (Withdrawn 05/15/92)	Nebraska Republican Party
Young, Philip M. - Lincoln	

REPORTS

Received copies from the Department of Roads of the January - June 1992 Price Index of Highway Construction Costs for the State of Nebraska.

Received annual report from the Nebraska Municipal Power Pool, Municipal Energy Agency of Nebraska, and Nebraska Public Gas Agency for the fiscal year 1991-1992.

MOTION - Approve Appointments

Mr. Wesely moved the adoption of the report of the Health and Human Services Committee for the following Governor appointments found in the Journal on page 87: Dr. Mark Kellough - State Board of Health; Violet Fickel - Foster Care Review Board; and Julie Dahlke and Lindsay Darnall - Commission for the Hearing Impaired.

Voting in the affirmative, 25:

Bohlke	Cudaback	Horgan	Peterson	Warner
Byars	Dierks	Lamb	Robinson	Wehrbein
Conway	Elmer	Lindsay	Schellpeper	Wesely
Coorsen	Haberman	Lynch	Schimek	Wickersham
Crosby	Hall	Moore	Schrock	Will

Voting in the negative, 0.

Present and not voting, 8:

Baack	Hefner	Labeledz	Rogers	Schmit
Chizek	Hillman	Nelson		

Excused and not voting, 16:

Abboud	Beutler	Johnson, L.	Landis	Rasmussen
Ashford	Beyer	Johnson, R.	Morrissey	Robak
Bernard-	Chambers	Kristensen	Pirsch	Withem
Stevens	Hartnett			

These appointments were confirmed with 25 ayes, 0 nays, 8 present and not voting, and 16 excused and not voting.

Mr. Cudaback asked unanimous consent to be excused until he returns. No objections. So ordered.

Mr. Horgan moved the adoption of the report of the Natural Resources Committee for the following Governor appointments found in the

Journal on page 87: Gary S. Goldberg - Ethanol Authority and Development Board and Robert H. Warrick - Environmental Control Council.

Mr. Horgan moved for a call of the house. The motion prevailed with 9 ayes, 0 nays, and 40 not voting.

Voting in the affirmative, 25:

Baack	Dierks	Horgan	Morrissey	Schimek
Bohlke	Elmer	Labadz	Nelson	Warner
Byars	Haberman	Lindsay	Peterson	Wesely
Conway	Hall	Lynch	Robinson	Wickersham
Crosby	Hillman	Moore	Schellpeper	Will

Voting in the negative, 0.

Present and not voting, 9:

Chizek	Cudaback	Lamb	Schmit	Wehrbein
Coordsen	Hefner	Rogers	Schrock	

Excused and not voting, 15:

Abboud	Beutler	Hartnett	Kristensen	Rasmussen
Ashford	Beyer	Johnson, L.	Landis	Robak
Bernard-Stevens	Chambers	Johnson, R.	Pirsch	Withem

These appointments were confirmed with 25 ayes, 0 nays, 9 present and not voting, and 15 excused and not voting.

The Chair declared the call raised.

Messrs. Coordsen, Schmit, and Rogers asked unanimous consent to be excused until they return. No objections. So ordered.

Mr. Conway moved the adoption of the report of the Government, Military and Veterans Affairs Committee for the following Secretary of State appointment found in the Journal on page 86: Robert W. Shively - Nebraska Accountability and Disclosure Commission.

Voting in the affirmative, 25:

Baack	Bohlke	Byars	Chizek	Conway
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Crosby	Hall	Lynch	Schellpeper	Wehrbein
Dierks	Hillman	Moore	Schimek	Wesely
Elmer	Labeledz	Morrissey	Schrock	Wickersham
Haberman	Lamb	Peterson	Warner	Will

Voting in the negative, 0.

Present and not voting, 6:

Hefner	Lindsay	Nelson	Robinson	Schmit
Horgan				

Excused and not voting, 18:

Abboud	Beutler	Cudaback	Kristensen	Robak
Ashford	Beyer	Hartnett	Landis	Rogers
Bernard-	Chambers	Johnson, L.	Pirsch	Withem
Stevens	Coordsen	Johnson, R.	Rasmussen	

The appointment was confirmed with 25 ayes, 0 nays, 6 present and not voting, and 18 excused and not voting.

ANNOUNCEMENT

The Chair announced Sunday, August 9, is Senator Lynch's birthday.

SELECT FILE

LEGISLATIVE BILL 3. E & R amendment, AM5301, found in the Journal on page 81, was adopted.

Mr. Hall renewed his pending amendment, AM021S, found in the Journal on page 89.

Messrs. Horgan, Wickersham, Schmit, and Morrissey asked unanimous consent to be excused until they return. No objections. So ordered.

Mr. Hall requested a record vote on his amendment.

Voting in the affirmative, 13:

Ashford	Bernard-	Hall	Pirsch	Warner
Baack	Stevens	Hillman	Robak	Wesely
	Crosby	Lindsay	Schimek	Will

Voting in the negative, 11:

Bohlke	Elmer	Lamb	Peterson	Wehrbein
Byars	Haberman	Moore	Robinson	Wickersham
Dierks				

Present and not voting, 7:

Chizek	Hefner	Nelson	Schellpeper	Schrock
Conway	Labeledz			

Excused and not voting, 18:

Abboud	Coordsen	Johnson, L.	Lynch	Rogers
Beutler	Cudaback	Johnson, R.	Morrissey	Schmit
Beyer	Hartnett	Kristensen	Rasmussen	Withem
Chambers	Horgan	Landis		

The Hall amendment lost with 13 ayes, 11 nays, 7 present and not voting, and 18 excused and not voting.

Messrs. Lamb, Haberman, Wickersham, Elmer, Byars, Coordsen, Schmit, Hefner, R. Johnson, Schrock, Cudaback, Wehrbein, Schellpeper, Dierks, Peterson, Beyer, Robinson, Mmes. Bohlke, and Robak renewed their pending amendment, AM020S, found in the Journal on page 94.

Mrs. Robak moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 25 ayes, 0 nays, and 24 not voting.

Mr. Lamb moved for a call of the house. The motion prevailed with 14 ayes, 0 nays, and 35 not voting.

The Lamb et al. amendment was adopted with 27 ayes, 9 nays, and 13 excused and not voting.

The Chair declared the call raised.

Mr. Moore offered the following amendment:

AM034S

(Amendments to E & R amendment, AM5301)

- 1 1. Strike section 4 and insert the following
- 2 new section:
- 3 "Sec. 4. The exemption granted in section 3

4 of this act shall be conditioned upon filing
 5 requirements for the exemption as imposed by the Tax
 6 Commissioner. The requirements imposed by the Tax
 7 Commissioner shall be related to (1) ensuring that the
 8 property purchased qualifies for the exemption and (2)
 9 ensuring that relevant information on the property
 10 purchased is available to local governmental officials
 11 for personal property tax collection purposes. Any
 12 information received pursuant to the requirements of
 13 this section may be disclosed to any tax official in
 14 this state. Any taxpayer who provides false information
 15 on the forms required by the Tax Commissioner for
 16 purposes of this section shall be subject to the
 17 penalties provided in subsection (8) of section
 18 77-2705."

Mr. Coordsen asked unanimous consent to be excused until he returns.
 No objections. So ordered.

The Moore amendment was adopted with 25 ayes, 1 nay, 9 present and
 not voting, and 14 excused and not voting.

Mr. Wesely requested a machine vote on the advancement of the bill.

Mr. Hefner moved for a call of the house. The motion prevailed with
 14 ayes, 0 nays, and 35 not voting.

Mr. Wesely requested a roll call vote on the advancement of the bill.

Voting in the affirmative, 26:

Baack	Coordsen	Hefner	Nelson	Schellpeper
Bernard-	Crosby	Labedz	Peterson	Schmit
Stevens	Cudaback	Lamb	Robak	Schrock
Bohlke	Dierks	Moore	Robinson	Wehrbein
Byars	Elmer	Morrissey	Rogers	Wickersham
Conway	Haberman			

Voting in the negative, 11:

Ashford	Hall	Lindsay	Schimek	Wesely
Beutler	Hillman	Pirsch	Warner	Will
Chizek				

Excused and not voting, 12:

Abboud	Hartnett	Johnson, R.	Landis	Rasmussen
Beyer	Horgan	Kristensen	Lynch	Withem
Chambers	Johnson, L.			

Advanced to E & R for engrossment with 26 ayes, 11 nays, and 12 excused and not voting.

The Chair declared the call raised.

Messrs. Coordsen and Cudaback asked unanimous consent to be excused until they return. No objections. So ordered.

LEGISLATIVE BILL 9. E & R amendment, AM5302, found in this day's Journal, was adopted.

Mr. Peterson offered the following amendment:

AM035S

- 1 1. Strike the original sections and all
- 2 amendments thereto and insert the following new
- 3 sections:
- 4 "Section 1. Notwithstanding any provision of
- 5 law to the contrary, a special primary election shall be
- 6 held on September 1, 1992, for the purpose of nominating
- 7 candidates for the general election in 1992 for
- 8 odd-numbered legislative districts the boundaries of
- 9 which were changed by the Legislature in 1992. Any
- 10 person desiring to be a candidate for a legislative
- 11 district at the special primary election shall file with
- 12 the Secretary of State by 5 p.m. on August 21, 1992.
- 13 Any person filing as a candidate for the special primary
- 14 election who was a candidate for a legislative district
- 15 at the primary election in 1992 shall not be required to
- 16 pay the filing fee prescribed in section 32-513. The
- 17 Secretary of State shall certify the offices and
- 18 candidates to be on the ballots on August 24, 1992.
- 19 Each election commissioner or county clerk in the
- 20 districts in which the special primary election will be
- 21 held shall post notice of the special primary election
- 1 in his or her office and shall publish notice of the
- 2 special primary election at least once in a newspaper
- 3 designated by the county board between August 24 and
- 4 August 31, 1992. Absentee ballots shall be available
- 5 for the election by August 25, 1992. The last day for
- 6 voter registration for the special primary election

7 shall be August 26, 1992. Sample ballots shall be
 8 published after August 27 but before August 31, 1992.
 9 After the election, the county canvassing board shall
 10 meet on September 3, 1992, and the board of state
 11 canvassers shall meet on September 8, 1992. Any
 12 recounts necessary shall be made on September 11, 1992,
 13 and the Secretary of State shall certify the names of
 14 those candidates nominated at the special primary
 15 election to the election commissioners and county clerks
 16 by September 14, 1992. The provisions of Chapter 32
 17 shall apply when not in conflict with this section.
 18 Sec. 2. Since an emergency exists, this act
 19 shall be in full force and take effect, from and after
 20 its passage and approval, according to law."

Mrs. Labeledz asked unanimous consent to be excused until she returns.
 No objections. So ordered.

Mr. Peterson moved for a call of the house. The motion prevailed with
 10 ayes, 0 nays, and 39 not voting.

Mr. Peterson requested a roll call vote on his amendment.

Voting in the affirmative, 17:

Ashford	Hall	Peterson	Rogers	Schrock
Bohlke	Hefner	Pirsch	Schellpeper	Wehrbein
Crosby	Lamb	Robinson	Schimek	Will
Dierks	Nelson			

Voting in the negative, 3:

Conway	Moore	Warner
--------	-------	--------

Present and not voting, 14:

Baack	Beutler	Chizek	Hillman	Robak
Bernard-	Byars	Elmer	Lindsay	Wesely
Stevens	Chambers	Haberman	Morrissey	Wickersham

Absent and not voting, 1:

Schmit

Excused and not voting, 14:

Abboud	Cudaback	Johnson, L.	Labeledz	Rasmussen
Beyer	Hartnett	Johnson, R.	Landis	Withem
Coordsen	Horgan	Kristensen	Lynch	

The Peterson amendment lost with 17 ayes, 3 nays, 14 present and not voting, 1 absent and not voting, and 14 excused and not voting.

The Chair declared the call raised.

Mr. Rogers asked unanimous consent to be excused until he returns. No objections. So ordered.

Advanced to E & R for engrossment.

Mrs. Pirsch asked unanimous consent to be excused until she returns. No objections. So ordered.

RESOLUTION

LEGISLATIVE RESOLUTION 4. Introduced by Hall, 7.

WHEREAS, the Nebraska Supreme Court, in *Bahensky v. State*, 241 Neb. 147 (1992) ruled that the revenue-generating provisions of Laws 1991, LB 829, were unconstitutional because they were inseverable from the provisions of the bill which provided for an exemption of nearly all personal property from property taxation for 1991; and

WHEREAS, three major portions of that revenue-generating package were amended in 1992; and

WHEREAS, Laws 1992, LB 719A, amended and reenacted Laws 1991, LB 829, section 20, dealing with the depreciation surcharge, Laws 1992, LB 871, and Laws 1992, LB 1063, amended and reenacted Laws 1991, LB 829, sections 21 and 23, dealing with the reduced retailer collection fee, and Laws 1992, LB 871, amended and reenacted Laws 1991, LB 829, section 22, dealing with the energy sales tax; and

WHEREAS, the Supreme Court in *State ex. rel. Wright v. Pepperl*, 221 Neb. 664 (1986) rejected a presumption that a statute was unconstitutional until the Supreme Court ruled on an amended version and directed a state official to carry out her duties in accordance with the law as amended.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SECOND LEGISLATURE OF NEBRASKA, SECOND SPECIAL SESSION:

1. That the Legislature considers Laws 1991, LB 829, sections 21 to 23, as amended, to be the valid law of Nebraska, enforceable in all respects.

2. That no person obligated to pay the depreciation surcharge, to retain the modified retailer collection fee, or to pay the energy sales tax under Laws 1991, LB 829, as amended by Laws 1992, LB 719A, Laws 1992, LB 871, or Laws 1992, LB 1063, shall be relieved of this obligation.

3. That no person who has paid the depreciation surcharge, has retained the modified retailer collection fee, or has paid the energy sales tax under Laws 1991, LB 829, as amended by Laws 1992, LB 719A, Laws 1992, LB 871, or Laws 1992, LB 1063, shall be entitled to any refund of such taxes paid or fees retained.

4. That all state and local officials are directed to carry out their duties in accordance with Laws 1991, LB 829, sections 20 to 23, as amended.

5. That should additional revenue be required for the state due to the ruling of the Supreme Court in Bahensky, the Legislature shall first look to reenacting those portions of Laws 1991, LB 829, which have not been subsequently amended and reenacted.

Laid over.

VISITORS

Visitors to the Chamber were Jean-Claude Deroche, Sophie Deroche, and Laurent Didier from France.

ADJOURNMENT

At 11:45 a.m., on a motion by Speaker Baack, the Legislature adjourned until 10:00 a.m., Monday, August 10, 1992.

Patrick J. O'Donnell
Clerk of the Legislature

FIFTH DAY - AUGUST 10, 1992
LEGISLATIVE JOURNAL
NINETY-SECOND LEGISLATURE
SECOND SPECIAL SESSION

FIFTH DAY

Legislative Chamber, Lincoln, Nebraska
Monday, August 10, 1992

Pursuant to adjournment, the Legislature met at 10:00 a.m., Speaker Baack presiding.

PRAYER

The prayer was offered by Senator Elroy M. Hefner.

MR. LAMB PRESIDING

ROLL CALL

The roll was called and all members were present except Mr. Kristensen who was excused; and Messrs. Beyer, Chambers, Lindsay, and Wehrbein who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the fourth day was approved.

SELECT COMMITTEE REPORTS
Enrollment and Review

Correctly Engrossed

The following bills were correctly engrossed: 3 and 9.

Enrollment and Review Change to LB 3

The following changes, required to be reported for publication in the Journal, have been made:

ER7185

1. In the Moore amendment, AM034S:
 - a. Section 4 has been renumbered as section 5; and
 - b. On page 1, line 3, "3" has been struck and "4" inserted.
2. In the E & R amendments, AM5301, amendment 2 has been struck.
3. On page 1, lines 2 through 8 have been struck and "section 77-1229, Reissue Revised Statutes of Nebraska, 1943, as amended by Laws 1992, LB 1063, section 98, section 77-202, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 1063, section 53, section 77-2701, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 871, section 3, and Laws 1992, LB 1063, section 180, and Laws 1992, LB 1063, sections 47 and 181; to exempt livestock from personal property taxation; to change provisions related to listing taxable tangible personal property; to redefine a term; to provide an exemption from the sales and use taxes; to provide filing requirements; to limit the applicability of refund provisions; to harmonize provisions; to provide operative dates; and to repeal the original sections." inserted.

(Signed) Eric Will, Chairperson

ATTORNEY GENERAL'S OPINION

Opinion No. 92100

DATE: August 7, 1992

SUBJECT: Scope of Governor's Special Session Call,
LB15 - Redistricting

REQUESTED BY: Senator Rex Haberman
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Steve Grasz, Deputy Attorney General

You have requested an opinion as to "whether LB15, introduced during the Special Session of the Legislature currently in progress, is within the 'call' issued by Governor Ben Nelson on July 27, 1992." Our analysis of your question is set forth below.

Article IV, Section 8 of the Nebraska Constitution provides:

The Governor may, on extraordinary occasions, convene the Legislature by proclamation, stating therein the purpose for which they are convened, and the Legislature shall enter upon no business except that for which they were called together.

As was discussed in Attorney General Opinion No. 89069, dated November 9, 1989, the last portion of Article IV, Section 8 places an express limitation on the power of the Legislature to act during a special session. In Arrow Club, Inc. v. Nebraska Liquor Control Commission, 177 Neb. 686, 689, 131 N.W.2d 134, 137 (1964), the court, discussing the nature of this limitation, stated:

It is well established that the Legislature while in special session can transact no business except that for which it was called together. Chicago, B. & Q. R.R. Co. v. Wolfe, 61 Neb. 502, 86 N.W. 441. The proclamation may state the purpose for which the Legislature is convened in broad, general terms or it may limit the consideration to a specified phase of a general subject. The Legislature is free to determine in what manner the purpose shall be accomplished, but it must confine itself to the matters submitted to it by the proclamation.

The court in Arrow Club, quoting at length from the Pennsylvania Supreme Court's decision in Commonwealth ex rel. Schnader v. Liveright, 308 Pa. 35, 161 A. 697 (1932), continued as follows:

This constitutional provision contemplates that there shall first exist in the executive mind a definite conception of the public emergency which demand an extraordinary session. His mental attitude or intention is expressed in his proclamation, the purpose of which is to inform the members of the legislature of subjects for legislation, and to advise the public generally that objections may be presented if desired. It is not only a guide or chart with respect to which the legislature may act, but also a check restricting its actions so that rights may not be affected without notice. The proclamation may contain many or few subjects according to the governor's conception of the public need. While the subjects may be stated broadly or in general terms, the special business, as related to the general subject on which legislation is desired, should be designated by imposing qualifying matter to reduce or restrict. Although the subjects should be sufficient to evoke intelligent and responsive action from the legislature, it is not necessary that they include all the methods of accomplishment. The guiding principle in sustaining legislation of a special session is that it be germane to, or within, the apparent scope of the subjects which have been designated as proper fields for legislation. In construing a call the words of any portion thereof must be interpreted not only as commonly and universally understood, but also as applicable to the subject intended to be affected by legislation.

While the legislature must confine itself to the matters submitted, it need not follow the views of the governor or legislate in any particular way. Within the special business or designated subjects submitted, the legislature cannot be restricted or dictated to by the

governor. It is a free agent, and the governor, under the guise of definition, cannot direct or control its action. The Legislature while in special session may enact legislation relating to, germane to, and having a natural connection with the purpose for which it was convened. . . . The presumption is always in favor of the constitutionality of legislation, and an act should be held to be within the call if it can be done by any reasonable construction.

Id. at 689-90, 131 N.W.2d at 137. (Emphasis added.)

As we stated in Attorney General Opinion No. 86028, dated November 14, 1986, "the decision in Arrow Club, reflects certain general principles regarding the limitations imposed on legislative action by virtue of the scope of the executive's call for a special legislative session. First, courts uniformly agree that, for a legislative enactment to be valid under the call, the legislation must be "germane" or "related to" the subjects stated in the call. Second, it is universally held that the Governor's call cannot be used to inhibit legislative discretion, and that. . ."the Governor may not, under the guise of naming a subject, limit its scope so drastically that he in effect imposes upon the Legislature his own view of what policy should be adopted." Comment, Scope of Governor's Call as Constitutional Limitation on Business of Special Session of the Legislature, 43 Neb. L. Rev. 605, 608-09 (1964). In applying these principles, the majority of courts deciding cases challenging legislation enacted at special legislative sessions as outside the scope of the call have adopted a liberal construction, upholding legislative acts if they can conceivably fall within the subjects mentioned within the call. Id. at 610-615."

Therefore, we must next examine the language of the Call. The Call issued by the Governor on July 27, 1992 states:

I, E. Benjamin Nelson, as Governor of the State of Nebraska, believing that an extraordinary occasion has arisen, DO HEREBY CALL the Legislature of Nebraska to convene in extraordinary session at the State Capitol on July 31, 1992, at 3:00 p.m. for the purpose of considering and enacting legislation on only the following subjects:

. . . .
Legislation to correct unconstitutional provisions of Laws 1991, LB614 pursuant to Day vs. Nelson, No. S-92- 229, slip op. (Neb. S. Ct. July 2, 1992).

Thus, the Governor's Call is limited to legislation to correct unconstitutional provisions of Laws 1991, LB614 pursuant to Day v. Nelson. . . ." In Day v. Nelson, §§5-219 and 5-241 of LB614 were declared unconstitutional. These sections pertain to legislative districts 18 and 40 in northeast Nebraska. LB15, as you have noted in your request, would adjust legislative district boundaries in southwest

Nebraska. However, as we stated in Attorney General Opinion No. 92098, dated August 3, 1992:

We believe that while the Legislature clearly must do another redistricting plan so as to give Madison County its own legislative district, that plan may also involve legislative districts across the state other than those specifically listed in the district court's order in the Day case.

Our conclusion is supported by language in Burns v. Richardson, 384 U.S. 73 (1966). In that case, the United State Supreme Court indicated:

. . .the body creating an apportionment plan in compliance with a judicial order should ordinarily be left free to devise proposals for apportionment on an overall basis.
384 U.S. at 83 (citations omitted).

Since the correction of unconstitutional provisions of LB614 requires changes outside of districts 18 and 40, and in light of the U.S. Supreme Court's decision quoted above, we conclude LB15 would be upheld by a court as being germane to or within the scope of the Governor's Call. To remove any uncertainty, it is within the Governor's power to amend the Call so as to more clearly define its scope.

Sincerely,
(Signed) Steve Grasz
Deputy Attorney General

LSG:bks

REPORT

Received quarterly report from the Nebraska Investment Finance Authority (NIFA) on the use of the proceeds of the 1992 Series A and Series B Community Development Loan Notes (City of Lincoln - 1992) Program pursuant to Neb. Rev. Stat. § 58-270(4).

RESOLUTIONS

LEGISLATIVE RESOLUTION 1. Read. Considered.

MR. WARNER PRESIDING

LR 1 was adopted with 32 ayes, 0 nays, and 17 not voting.

LEGISLATIVE RESOLUTION 3. Read. Considered.

LR 3 was adopted with 31 ayes, 0 nays, and 18 not voting.

SELECT FILE

LEGISLATIVE BILL 7. E & R amendment, AM5303, found in the Journal on page 97, was adopted.

Messrs. Hefner, Bernard-Stevens, and Ms. Schimek offered the following amendment:

AM036S

(Amendments to Standing Committee amendments, AM022S)

1 1. Strike sections 1 to 9 and all amendments

2 thereto and insert the following new sections:

3 "Section 1. That section 50-1101, Revised

4 Statutes Supplement, 1991, be amended to read as follows:

5 50-1101. The State of Nebraska is hereby
6 divided into forty-nine legislative districts. Each
7 district shall be entitled to one member in the
8 Legislature. The legislative districts described in
9 sections 50-1102 to 50-1150 and sections 2 and 4 of this
10 act are based on the 1990 Census of Population by the
11 United States Department of Commerce, Bureau of the
12 Census.

13
14 Sec. 2. District No. 18 shall contain the
15 county of Madison.

16 Sec. 3. That section 50-1120, Revised
17 Statutes Supplement, 1991, be amended to read as
18 follows:

19 50-1120. District No. 19 shall contain the
20 counties of Dixon, Stanton, and Cedar, that part of
1 Wayne County which includes the precincts of Hoskins,
2 Garfield, Sherman, Deer Creek, and Wilbur, the city of
3 Sholes, the city of Carroll, and the city of Hoskins,
4 and those parts of Pierce and that part of Knox counties
5 County not included in legislative district 40.

6 Sec. 4. District No. 40 shall contain the
7 counties of Boyd, Holt, Pierce, and Antelope and that
8 part of Knox County which includes the townships of
9 Raymond, Western, Washington, Walnut Grove, Bohemia,
10 Jefferson, Logan, Niobrara, and Sparta.

11 Sec. 5. That section 50-1151, Revised
12 Statutes Supplement, 1991, be amended to read as
13 follows:

14 50-1151. The precincts, townships, and cities
15 mentioned in sections 50-1102 to 50-1150 and sections 2

16 and 4 of this act are the precincts, townships, and
17 cities set out in the 1990 Census of Population by the
18 United States Department of Commerce, Bureau of the
19 Census. References to any city or village or the limits
20 thereof or to any precincts within or without any city
21 or village shall mean the limits of such city, village,
22 or precinct as they existed on April 1, 1990. References
23 to streets, roads, boulevards, avenues, highways, or
24 other public ways, railroad rights-of-way, creeks, or
1 rivers shall mean the center line thereof unless
2 otherwise specifically provided.

3 Sec. 6. That section 50-1152, Revised
4 Statutes Supplement, 1991, as amended by Laws 1992, LB
5 946, section 1, be amended to read as follows:

6 50-1152. Sections 50-1101 to 50-1152 50-1102
7 to 50-1118, 50-1121 to 50-1140, and 50-1142 to 50-1150
8 shall become operative on April 16, 1992, except that
9 members of the Legislature from the odd-numbered
10 districts mentioned in such sections 50-1101 to 50-1152
11 shall be nominated at the primary election in 1992 and
12 elected at the general election in November 1992 for the
13 term commencing January 6, 1993. This act shall become
14 operative on the effective date of this act. The
15 members of the Legislature elected or appointed prior to
16 April 16, 1992 the effective date of this act, shall
17 represent the newly established districts for the
18 balance of their terms, with each member representing
19 the same numbered district as prior to April 16, 1992
20 the effective date of this act.

21 Sec. 7. That original sections 50-1101,
22 50-1120, and 50-1151, Revised Statutes Supplement, 1991,
23 and section 50-1152, Revised Statutes Supplement, 1991,
24 as amended by Laws 1992, LB 946, section 1, and also
1 sections 50-1119 and 50-1141, Revised Statutes
2 Supplement, 1991, are repealed."

Mrs. Labedz asked unanimous consent to be excused until she returns.
No objections. So ordered.

SPEAKER BAACK PRESIDING

Mr. Lamb asked unanimous consent to be excused until he returns. No
objections. So ordered.

Mr. Withem offered the following amendment to the pending Hefner et al. amendment:

FA2S2

Amend AM036S

Page 1, Line 14, strike "18", insert "19"

Page 1, Line 19, strike "19", insert "18"

Mr. Abboud moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 27 ayes, 0 nays, and 22 not voting.

Mr. Chizek asked unanimous consent to be excused until he returns. No objections. So ordered.

Mr. Withem moved for a call of the house. The motion prevailed with 21 ayes, 0 nays, and 28 not voting.

Mr. Withem requested a roll call vote on his amendment.

Voting in the affirmative, 24:

Abboud	Chizek	Hartnett	Lynch	Wesely
Ashford	Coordsen	Hillman	Morrissey	Wickersham
Beutler	Cudaback	Horgan	Nelson	Will
Bohlke	Haberman	Landis	Peterson	Withem
Chambers	Hall	Lindsay	Rasmussen	

Voting in the negative, 17:

Baack	Conway	Johnson, L.	Robak	Schimek
Bernard-	Crosby	Johnson, R.	Robinson	Warner
Stevens	Dierks	Moore	Rogers	Wehrbein
Byars	Hefner	Pirsch		

Present and not voting, 3:

Elmer	Schellpeper	Schrock
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Absent and not voting, 1:

Schmit

Excused and not voting, 4:

Beyer	Kristensen	Labeledz	Lamb
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The Withem amendment lost with 24 ayes, 17 nays, 3 present and not voting, 1 absent and not voting, and 4 excused and not voting.

The Chair declared the call raised.

Messrs. Schmit and Haberman asked unanimous consent to be excused until they return. No objections. So ordered.

Mr. Hefner moved for a call of the house. The motion prevailed with 23 ayes, 0 nays, and 26 not voting.

Mr. Hefner requested a roll call vote on the Hefner et al. amendment.

Voting in the affirmative, 10:

Ashford	Chizek	Johnson, L.	Pirsch	Wehrbein
Bernard-	Hefner	Moore	Schimek	Withem
Stevens				

Voting in the negative, 26:

Abboud	Crosby	Hillman	Morrissey	Schellpeper
Baack	Cudaback	Johnson, R.	Peterson	Warner
Bohlke	Dierks	Landis	Robak	Wesely
Byars	Hall	Lindsay	Robinson	Wickersham
Conway	Hartnett	Lynch	Rogers	Will
Coordsen				

Present and not voting, 8:

Beutler	Elmer	Lamb	Rasmussen	Schrock
Chambers	Horgan	Nelson		

Excused and not voting, 5:

Beyer	Haberman	Kristensen	Labeledz	Schmit
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The Hefner et al. amendment lost with 10 ayes, 26 nays, 8 present and not voting, and 5 excused and not voting.

Pending.

RESOLUTION

LEGISLATIVE RESOLUTION 5. Introduced by Hartnett, 45; Schmit, 23.

WHEREAS, pilots Harlon Hain of Bellevue and Paul Hamer of Omaha flew their two-engine Cessna named the "Big-O" to third place in the 'Round-the-World Air Race in July of 1992; and

WHEREAS, the 'Round-the-World Air Race was organized by the Arcen-Ciel flying club of Paris; and

WHEREAS, Hain and Hamer traveled seventeen thousand miles in twenty-four days, made thirty stops in thirteen countries, and finished within eleven minutes of first place; and

WHEREAS, the Bellevue-Omaha flying team demonstrated a hale, hearty, and adventurous spirit as they participated in this aviation history-making event.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SECOND LEGISLATURE OF NEBRASKA, SECOND SPECIAL SESSION:

1. That the Legislature congratulates Harlon Hain and Paul Hamer on their great accomplishment.

2. That a copy of this resolution be sent to Harlon Hain, 212 Bellevue Blvd. North, Bellevue, Nebraska, 68005, and Paul Hamer, Timber Lodge Lake, Waterloo, Nebraska.

Laid over.

VISITORS

Visitors to the Chamber were Senator Hillman's grandson, Trevor Hergenreder, from Gering; Judy and Jennifer Reiersen from Illinois, Senator Moore's grandmother, Ruth Moore, and parents, Dale and June Moore, from Benedict; 14 Girl Scouts and sponsors from Troop 689, Westmont Elementary, Springfield; and Mr. Jaime Lopez Portillo, Mr. Rafael Almeida, and Mr. William Wagner from Mexico, Randy Klien, and Patrick Ptacek.

RECESS

At 12:08 p.m., on a motion by Mrs. Hillman, the Legislature recessed until 1:30 p.m.

AFTER RECESS

The Legislature reconvened at 1:30 p.m., Speaker Baack presiding.

ROLL CALL

The roll was called and all members were present except Mr. Kristensen who was excused; and Messrs. Beyer, Byars, Chambers, Schmit, and Mrs. Pirsch who were excused until they arrive.

SELECT FILE

LEGISLATIVE BILL 7. Considered.

Pending.

EASE

The Legislature was at ease from 2:02 p.m. until 2:07 p.m.

SELECT FILE

LEGISLATIVE BILL 15. Messrs. Schrock and Elmer offered the following amendment:

AM032S

- 1 1. Strike original section 3 and insert the
- 2 following new sections:
- 3 "Sec. 3. That section 50-1152, Revised
- 4 Statutes Supplement, 1991, as amended by Laws 1992, LB
- 5 946, section 1, be amended to read as follows:
- 6 50-1152. Sections ~~50-1101 to 50-1152~~ 50-1101
- 7 to 50-1138, 50-1140 to 50-1144, and 50-1146 to 50-1151
- 8 shall become operative on April 16, 1992, except that
- 9 members of the Legislature from the odd-numbered
- 10 districts mentioned in such sections ~~50-1101 to 50-1152~~
- 11 shall be nominated at the primary election in 1992 and
- 12 elected at the general election in November 1992 for the
- 13 term commencing January 6, 1993. This act shall become
- 14 operative on the effective date of this act. The
- 15 members of the Legislature elected or appointed prior to
- 16 ~~April 16, 1992~~ the effective date of this act, shall
- 17 represent the newly established districts for the
- 18 balance of their terms, with each member representing
- 19 the same numbered district as prior to ~~April 16, 1992~~
- 20 the effective date of this act.
- 21 Sec. 4. That original sections 50-1139 and
- 1 50-1145, Revised Statutes Supplement, 1991, and section
- 2 50-1152, Revised Statutes Supplement, 1991, as amended
- 3 by Laws 1992, LB 946, section 1, are repealed."
- 4 2. Renumber the remaining section

5 accordingly.

The Schrock-Elmer amendment was adopted with 25 ayes, 0 nays, 18 present and not voting, and 6 excused and not voting.

Mr. Bernard-Stevens requested a machine vote on the advancement of the bill.

Mr. Schrock moved for a call of the house. The motion prevailed with 21 ayes, 0 nays, and 28 not voting.

Mr. Withem requested a roll call vote on the advancement of the bill.

Voting in the affirmative, 26:

Abboud	Conway	Elmer	Lynch	Robinson
Baack	Coordsen	Horgan	Nelson	Schrock
Beutler	Crosby	Johnson, R.	Peterson	Warner
Bohlke	Cudaback	Labeledz	Rasmussen	Wehrbein
Byars	Dierks	Landis	Robak	Wesely
Chizek				

Voting in the negative, 1:

Haberman

Present and not voting, 18:

Ashford	Hartnett	Lamb	Pirsch	Wickersham
Bernard-	Hefner	Lindsay	Rogers	Will
Stevens	Hillman	Moore	Schellpeper	Withem
Hall	Johnson, L.	Morrissey	Schimek	

Excused and not voting, 4:

Beyer	Chambers	Kristensen	Schmit
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Advanced to E & R for engrossment with 26 ayes, 1 nay, 18 present and not voting, and 4 excused and not voting.

The Chair declared the call raised.

LEGISLATIVE BILL 2. Advanced to E & R for engrossment.

MOTION - Return LB 9 to Select File

Mr. Conway moved to return LB 9 to Select File for the following specific amendment:
AM037S

(Amendments to Final Reading copy)

- 1 1. Insert the following new section:
- 2 "Section 1. That section 32-424, Reissue
- 3 Revised Statutes of Nebraska, 1943, be amended to read
- 4 as follows:
- 5 32-424. (1) The county clerk or election
- 6 commissioner shall place the names of all nonpolitical
- 7 candidates, including those candidates certified to him
- 8 or her by the Secretary of State, except those who by
- 9 statute are to be on separate ballots, upon the same
- 10 official general election ballot as the political
- 11 candidates. All official and sample general election
- 12 ballots shall be printed and in the possession of the
- 13 issuing officer not later than ten days before the
- 14 general election and subject to inspection by the
- 15 candidates or their agents. The official ballot shall
- 16 be headed with the words Official Ballot, and sample
- 17 ballots shall be headed by the words Sample Ballot. The
- 18 names placed on the official and sample general election
- 19 ballots shall be of candidates nominated in the primary
- 20 election or of petition candidates, and the names of the
- 1 candidates shall be placed under the proper titles. The
- 2 placing of names of all political candidates on the
- 3 general election ballot shall follow the procedures
- 4 provided in section 32-426. The general election ballot
- 5 shall be printed as required by sections 32-419 and
- 6 32-421.01. Sample ballots in each precinct shall be the
- 7 same as the official ballots for the precinct. One set
- 8 of sample ballots shall be posted in the office of the
- 9 county clerk or election commissioner not later than ten
- 10 days prior to the general election.
- 11 (2) The names of the nonpolitical candidates
- 12 shall be rotated on the official general election
- 13 ballot. The Except as provided in this section for
- 14 petition candidates, the county clerk or election
- 15 commissioner shall place on the official general
- 16 election ballot, on each office division, twice as many
- 17 names as there are places to be filled at the general
- 18 election. The names of such nonpolitical candidates
- 19 shall be the names of the persons who received the
- 20 highest number of votes for the office for which they

21 were candidates in the primary. If more than one person
22 was a candidate for the same position in the primary,
23 the county clerk or election commissioner, in preparing
24 the official ballot for the general election, shall
1 place thereon the names of the two persons who received
2 the highest number of votes in the primary for the
3 position for which they were candidates. The county
4 clerk or election commissioner shall not place, but in
5 no event shall the names on the official ballot in each
6 office division be more than in excess of twice the
7 number of offices to be filled at the general election
8 except when more than two candidates petition on the
9 ballot under section 32-537. The county clerk or
10 election commissioner, in preparing the official
11 ballots, shall follow the order of precincts or wards as
12 set out in the official abstract book on file in his or
13 her office. The first set of ballots for the first
14 precinct or ward shall be the names of candidates filing
15 by date and hour or of those candidates filing
16 petitions, and for local candidates the names of
17 candidates shall be listed in the order of filing by
18 date and hour with the county clerk or election
19 commissioner, except as provided for Class III schools
20 which shall follow section 79-803.10, or of those
21 candidates filing petitions. Thereafter the names shall
22 be rotated precinct by precinct in each office division
23 in the order in which the precincts are set out in the
24 official abstract book. In making the change of
1 position, the printer shall take the line of type at the
2 head of each division and place it at the bottom of that
3 division, shoving up the column so that the name that
4 was second shall be first after the change. When the
5 name of a person is written in and voted for as a
6 candidate for any such position, who did not file as
7 ~~aforsaid~~ as a candidate in the primary election for
8 such nomination, such person shall not be entitled to a
9 certificate of nomination at such primary election nor
10 have his or her name placed on the general election
11 ballot unless he or she ~~shall be~~ is one of the
12 candidates receiving the number of votes qualifying him
13 or her for nomination and unless the number of votes so
14 received by him or her was at least five percent of the
15 total vote cast for Governor or for President at the
16 preceding general election in the political division
17 from which nominees for such position ~~are~~ were to be

18 chosen.

19 (3) Petitions for filling a vacancy on the
20 nonpolitical ballot for any office shall be filed in
21 accordance with the provisions of section 32-537.

22 (4) The candidate or candidates receiving the
23 highest number of votes at the general election shall be
24 declared duly elected to the office or offices for which
1 they were candidates."

2 2. On page 1, line 1, strike "section" and
3 insert "sections 32-424 and"; and in line 5 after the
4 first semicolon insert "to harmonize provisions;" and
5 strike "section" and insert "sections".

6 3. On page 5, line 6, strike "or" and show as
7 stricken; and in line 8 after "filled" insert "or (d)
8 the boundaries of a legislative district are changed by
9 the Legislature between the primary and general
10 elections".

11 4. On page 9, line 2, strike "section" and
12 insert "sections 32-424 and"; and in line 2 strike "is"
13 and insert "are".

14 5. Renumber the remaining sections
15 accordingly.

The Conway motion to return prevailed with 28 ayes, 0 nays, 17 present and not voting, and 4 excused and not voting.

SELECT FILE

LEGISLATIVE BILL 9. The Conway specific amendment, AM037S, found in this day's Journal, was adopted with 27 ayes, 0 nays, 18 present and not voting, and 4 excused and not voting.

Advanced to E & R for reengrossment.

MOTION - Return LB 9 to Select File

Mr. Bernard-Stevens moved to return LB 9 to Select File for the following specific amendment:
AM038S

(Amendments to Final Reading copy)

1 1. On page 2, line 11, after "(2)" insert
2 "(a)"; and after line 22 insert the following new
3 subdivision:

4 "(b) If the boundaries of a legislative
5 district are changed by the Legislature between the

6 primary and general elections, a candidate nominated for
 7 that legislative district at the primary election in
 8 that year shall be placed on the general election ballot
 9 if he or she resides in the district as changed. There
 10 shall be no vacancy on the ballot for the legislative
 11 district by virtue of the change in boundaries of the
 12 legislative district unless a candidate nominated at the
 13 primary election no longer resides in the district as
 14 changed."

The Bernard-Stevens motion to return prevailed with 25 ayes, 3 nays, 17 present and not voting, and 4 excused and not voting.

SELECT FILE

LEGISLATIVE BILL 9. The Bernard-Stevens specific amendment, AM038S, found in this day's Journal, was considered.

Mr. Lynch moved the previous question. The question is, "Shall the debate now close?" The motion lost with 11 ayes, 13 nays, and 25 not voting.

Messrs. Morrissey, Abboud, and L. Johnson asked unanimous consent to be excused until they return. No objections. So ordered.

The Bernard-Stevens specific amendment, AM038S, lost with 3 ayes, 15 nays, 24 present and not voting, and 7 excused and not voting.

Advanced to E & R for reengrossment.

LEGISLATIVE BILL 7. Mr. Conway offered the following amendment:

AM047S

- 1 1. Strike the original sections and all
- 2 amendments thereto and insert the following new
- 3 sections:
- 4 "Section 1. That section 50-1101, Revised
- 5 Statutes Supplement, 1991, be amended to read as
- 6 follows:
- 7 50-1101. The State of Nebraska is hereby
- 8 divided into forty-nine legislative districts. Each
- 9 district shall be entitled to one member in the
- 10 Legislature. The legislative districts described in
- 11 sections 50-1102 to 50-1150 and sections 3 and 5 of this
- 12 act are based on the 1990 Census of Population by the

13 United States Department of Commerce, Bureau of the
14 Census.

15 Sec. 2. That section 50-1118, Revised
16 Statutes Supplement, 1991, be amended to read as
17 follows:

18 50-1118. District No. 17 shall contain the
19 counties of Dakota and Thurston, that part of Cuming
20 County which includes the townships of Bancroft,
21 Cleveland, Grant, and Blaine and the village of
2 Bancroft, that part of Burt County which includes that
3 part of the precinct of Decatur containing a portion of
4 the Omaha Indian Reservation, that part of Dixon County
5 which includes the precincts of Ponca and Otter Creek
6 and the village of Ponca, and that part of Wayne County
7 not included in legislative district 19 which includes
8 the precincts of Logan, Hunter, Wakefield City, Leslie
9 and Plum Creek and the city of Wayne.

9 Sec. 3. District No. 18 shall contain the
10 counties of Cedar, Stanton, and Pierce, those parts of
11 Wayne and Dixon counties not included in legislative
12 district 17, and that part of Knox County which includes
13 the township of Lincoln and the village of Wausa.

14 Sec. 4. That section 50-1120, Revised
15 Statutes Supplement, 1991, be amended to read as
16 follows:

17 50-1120. District No. 19 shall contain the
18 county of Madison, counties of Dixon and Cedar, that
19 part of Wayne County which includes the precincts of
20 Hoskins, Garfield, Sherman, Deer Creek, and Wilbur, the
21 city of Sholes, the city of Carroll, and the city of
22 Hoskins, and those parts of Pierce and Knox counties not
23 included in legislative district 40.

24 Sec. 5. District No. 40 shall contain the
1 counties of Boyd, Holt, and Antelope and that part of
2 Knox County not included in legislative district 18.

3 Sec. 6. That section 50-1151, Revised
4 Statutes Supplement, 1991, be amended to read as
5 follows:

6 50-1151. The precincts, townships, and cities
7 mentioned in sections 50-1102 to 50-1150 and sections 3
8 and 5 of this act are the precincts, townships, and
9 cities set out in the 1990 Census of Population by the
10 United States Department of Commerce, Bureau of the
11 Census. References to any city or village or the limits
12 thereof or to any precincts within or without any city

13 or village shall mean the limits of such city, village,
 14 or precinct as they existed on April 1, 1990. References
 15 to streets, roads, boulevards, avenues, highways, or
 16 other public ways, railroad rights-of-way, creeks, or
 17 rivers shall mean the center line thereof unless
 18 otherwise specifically provided.

19 Sec. 7. That section 50-1152, Revised
 20 Statutes Supplement, 1991, as amended by Laws 1992, LB
 21 946, section 1, be amended to read as follows:

22 50-1152. Sections ~~50-1101 to 50-1152~~ 50-1102
 23 to 50-1117, 50-1121 to 50-1140, and 50-1142 to 50-1150
 24 shall become operative on April 16, 1992, except that
 1 members of the Legislature from the odd-numbered
 2 districts mentioned in such sections ~~50-1101 to 50-1152~~
 3 shall be nominated at the primary election in 1992 and
 4 elected at the general election in November 1992 for the
 5 term commencing January 6, 1993. This act shall become
 6 operative on the effective date of this act. The
 7 members of the Legislature elected or appointed prior to
 8 ~~April 16, 1992~~ the effective date of this act, shall
 9 represent the newly established districts for the
 10 balance of their terms, with each member representing
 11 the same numbered district as prior to ~~April 16, 1992~~
 12 the effective date of this act.

13 Sec. 8. That original sections 50-1101,
 14 50-1118, 50-1120, and 50-1151, Revised Statutes
 15 Supplement, 1991, and section 50-1152, Revised Statutes
 16 Supplement, 1991, as amended by Laws 1992, LB 946,
 17 section 1, and also sections 50-1119 and 50-1141,
 18 Revised Statutes Supplement, 1991, are repealed.

19 Sec. 9. Since an emergency exists, this act
 20 shall be in full force and take effect, from and after
 21 its passage and approval, according to law."

The Conway amendment was adopted with 27 ayes, 3 nays, 12 present
 and not voting, and 7 excused and not voting.

Mr. Hefner requested a record vote on the advancement of the bill.

Voting in the affirmative, 27:

Ashford	Byars	Dierks	Hillman	Lynch
Baack	Conway	Elmer	Johnson, R.	Nelson
Beutler	Coordsen	Hall	Labeledz	Peterson
Bohlke	Crosby	Hartnett	Landis	Rasmussen

Robak	Rogers	Warner	Wickersham	Will
Robinson	Schellpeper			

Voting in the negative, 6:

Bernard-	Hefner	Moore	Schimek	Wehrbein
Stevens	Horgan			

Present and not voting, 9:

Chizek	Haberman	Lindsay	Schrock	Withem
Cudaback	Lamb	Pirsch	Wesely	

Excused and not voting, 7:

Abboud	Chambers	Kristensen	Morrissey	Schmit
Beyer	Johnson, L.			

Advanced to E & R for engrossment with 27 ayes, 6 nays, 9 present and not voting, and 7 excused and not voting.

STANDING COMMITTEE REPORTS

Government, Military and Veterans Affairs

The Committee on Government, Military and Veterans Affairs desires to report favorably upon the appointments listed below. The Committee suggests the appointments be confirmed by the Legislature and suggests a record vote.

James J. Riskowski - Crime Victims Reparation Committee
 Jack D. Campbell - Crime Victims Reparation Committee
 Kim J. Stevens - Aeronautics Director

VOTE: Aye: Senators Conway, Coordsen, Lindsay, Schimek, Schrock, and Withem. Nay: none. Not Voting: none. Absent: Senators Bohlke and Robak.

(Signed) Gerald Conway, Chairperson

Agriculture

The Committee on Agriculture desires to report favorably upon the appointment listed below. The Committee suggests the appointment be confirmed by the Legislature and suggests a record vote.

Dale Johnson - Nebraska Dry Bean Commission

VOTE: Aye: Senators Rogers, Coordsen, Cudaback, Elmer, Hefner, Morrissey, and Schellpeper. Nay: none. Absent: Senator Chambers.

(Signed) Carson Rogers, Chairperson

RESOLUTION

LEGISLATIVE RESOLUTION 6. Introduced by Robinson, 16.

WHEREAS, the Midget and Legion baseball teams from Blair both won their respective Class B State Championships this past weekend; and

WHEREAS, these victories represent the fifth championship for each team, and this is the second time that they have both been champions in the same year; and

WHEREAS, Dan Petersen is the head coach and Pete Svengard is the assistant coach of the Blair Midget team; and

WHEREAS, Mark Gutschow is the head coach and Scott Nicholson is the assistant coach of the Blair Legion team, and Mr. Gutschow has been involved in every championship the Legion team has won and deserves special recognition for this accomplishment; and

WHEREAS, the hard work and dedication of the players and coaches of both teams is an inspiration to the Blair community and deserves recognition by the Legislature.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SECOND LEGISLATURE OF NEBRASKA, SECOND SPECIAL SESSION:

1. That the Legislature recognize and congratulate the Blair Midget and Legion baseball teams on their recent championships.
2. That a copy of this resolution be sent to each head coach of the teams.

Laid over.

EASE

The Legislature was at ease from 3:42 p.m. until 4:44 p.m.

STANDING COMMITTEE REPORT

Judiciary

The Committee on Judiciary desires to report favorably upon the appointment listed below. The Committee suggests the appointment be confirmed by the Legislature and suggests a record vote.

Steven M. Renteria - Nebraska Parole Board, Chairman

VOTE: Aye: Senators Abboud, Chizek, Labedz, Nelson, Pirsch, and Wickersham. Nay: Senator Chambers. Absent: Senator Kristensen.

(Signed) Jerry Chizek, Chairperson

SELECT COMMITTEE REPORTS **Enrollment and Review**

Correctly Engrossed

The following bills were correctly engrossed: 2, 7, and 15.

Correctly Reengrossed

The following bill was correctly reengrossed: 9.

Enrollment and Review Change to LB 7

The following changes, required to be reported for publication in the Journal, have been made:

ER7188

1. In the E & R amendments, AM5303, amendment 2 has been struck.

Enrollment and Review Change to LB 9

The following changes, required to be reported for publication in the Journal, have been made:

ER7186

1. In the Conway amendment, AM037S, on page 5, line 11, "2" has been struck and "1" inserted.

Enrollment and Review Change to LB 15

The following changes, required to be reported for publication in the Journal, have been made:

ER7187

1. On page 1, line 3, ", and section 50-1152, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 946, section 1" has

been inserted after "1991"; and in line 4 "to change operative date provisions;" has been inserted after the semicolon.

(Signed) Eric Will, Chairperson

ADJOURNMENT

At 4:45 p.m., on a motion by Mr. Conway, the Legislature adjourned until 9:00 a.m., Tuesday, August 11, 1992.

Patrick J. O'Donnell
Clerk of the Legislature

SIXTH DAY - AUGUST 11, 1992

LEGISLATIVE JOURNAL

**NINETY-SECOND LEGISLATURE
SECOND SPECIAL SESSION**

SIXTH DAY

Legislative Chamber, Lincoln, Nebraska
Tuesday, August 11, 1992

Pursuant to adjournment, the Legislature met at 9:02 a.m., Speaker Baack presiding.

PRAYER

The prayer was offered by Senator Merton L. Dierks.

ROLL CALL

The roll was called and all members were present except Messrs. Abboud, Chambers, Coordsen, Hall, Horgan, Landis, Lindsay, Morrissey, Mmes. Labedz, Pirsch, and Robak who were excused; and Messrs. Lynch and Schmit who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the fifth day was approved.

**STANDING COMMITTEE REPORT
Government, Military and Veterans Affairs**

LEGISLATIVE RESOLUTION 2CA. Placed on General File as amended.

Standing Committee amendment to LR 2CA:

AM045S

- 1 1. Strike original section 1 and insert the
- 2 following new section:
- 3 "Section 1. That at the general election in
- 4 November 1992 there shall be submitted to the electors
- 5 of the State of Nebraska for approval the following

6 amendment to the Constitution of Nebraska to amend
7 Article IV, section 20, Article V, section 5, and
8 Article VII, sections 3 and 10, add a new section 5A to
9 Article III, and repeal Article III, section 5:

10 III-5A 'The Legislature shall redistrict the
11 state after each federal decennial census. The primary
12 basis for such redistricting shall be the population,
13 excluding aliens, as shown by the next preceding federal
14 decennial census. In no case shall the population of a
15 legislative district, at the time redistricting is done,
16 deviate by more than two percent from the population
17 figure obtained by dividing the population of the state
18 by the number of legislative districts. One member of
19 the Legislature shall be elected from each district.
20 Districts shall be composed of contiguous territory,
21 shall be reasonably compact in form, and may recognize
1 existing communities of common economic interest.
2 District boundaries should respect county and municipal
3 lines but may deviate from such boundaries in
4 recognition of the other standards set forth in this
5 section. No district shall be drawn for the purpose of
6 favoring or disfavoring a political party, an incumbent,
7 or another person or group.'

8 IV-20 'There shall be a Public Service
9 Commission, consisting of not less than three nor more
10 than seven members, as the Legislature shall prescribe,
11 whose ~~term~~ terms of office shall be six years; and whose
12 compensation shall be fixed by the Legislature.
13 Commissioners shall be elected by districts of
14 substantially equal population as the Legislature shall
15 provide, but in no case shall the population of a Public
16 Service Commission district, at the time redistricting
17 is done, deviate by more than two percent from the
18 population figure obtained by dividing the population of
19 the state by the number of Public Service Commission
20 districts. The Legislature shall redistrict the state
21 after each federal decennial census. The primary basis
22 for such redistricting shall be the population,
23 excluding aliens, as shown by the next preceding federal
24 decennial census. Districts shall be composed of
1 contiguous territory, shall be reasonably compact in
2 form, and may recognize existing communities of common
3 economic interest. District boundaries should respect
4 county and municipal lines but may deviate from such
5 boundaries in recognition of the other standards set

6 forth in this section. No district shall be drawn for
7 the purpose of favoring or disfavoring a political
8 party, an incumbent, or another person or group.

9 The powers and duties of such commission shall
10 include the regulation of rates, service and general
11 control of common carriers as the Legislature may
12 provide by law. ~~But, in~~ In the absence of specific
13 legislation, the commission shall exercise the powers
14 and perform the duties enumerated in this provision.'

15 V-5 'The Legislature shall divide the state
16 into six ~~contiguous and compact~~ districts of
17 approximately equal population; which shall be numbered
18 from one to six; and which shall be known as the Supreme
19 Court judicial districts. The Legislature shall
20 redistrict the state after each federal decennial
21 census. ~~In any such redistricting, county lines shall~~
22 ~~be followed whenever practicable, but other established~~
23 ~~lines may be followed at the discretion of the~~
24 ~~Legislature.~~ The primary basis for such redistricting
1 shall be the population, excluding aliens, as shown by
2 the next preceding federal decennial census. In no case
3 shall the population of any Supreme Court judicial
4 district, at the time redistricting is done, deviate by
5 more than two percent from the population figure
6 obtained by dividing the population of the state by the
7 number of Supreme Court judicial districts. Districts
8 shall be composed of contiguous territory, shall be
9 reasonably compact in form, and may recognize existing
10 communities of common economic interest. District
11 boundaries should respect county and municipal lines but
12 may deviate from such boundaries in recognition of the
13 other standards set forth in this section. No district
14 shall be drawn for the purpose of favoring or
15 disfavoring a political party, an incumbent, or another
16 person or group.

17 Such districts shall not be changed except
18 upon the concurrence of a majority of the members of the
19 Legislature. Whenever the Supreme Court is
20 redistricted, the judges serving prior to the
21 redistricting shall continue in office; and the law
22 providing for such redistricting shall ~~where~~ when
23 necessary specify the newly established districts which
24 they shall represent for the balance of their terms.'

1 VII-3 'The State Board of Education shall be
2 composed of eight members; who shall be elected from

3 eight districts of substantially equal population as
4 provided by the Legislature. The Legislature shall
5 redistrict the state after each federal decennial
6 census. The primary basis for such redistricting shall
7 be the population, excluding aliens, as shown by the
8 next preceding federal decennial census. In no case
9 shall the population of any State Board of Education
10 district, at the time such redistricting is done,
11 deviate by more than two percent from the population
12 figure obtained by dividing the population of the state
13 by the number of State Board of Education districts.
14 Districts shall be composed of contiguous territory,
15 shall be reasonably compact in form, and may recognize
16 existing communities of common economic interest.
17 District boundaries should respect county and municipal
18 lines but may deviate from such boundaries in
19 recognition of the other standards set forth in this
20 section. No district shall be drawn for the purpose of
21 favoring or disfavoring a political party, an incumbent,
22 or another person or group.

23 Terms Their term of office of the members
24 shall be for four years each. Their duties Duties and
1 powers of the members shall be prescribed by the
2 Legislature, and they shall receive no compensation; but
3 shall be reimbursed their actual expense incurred in the
4 performance of their duties. The members of the State
5 Board of Education shall not be actively engaged in the
6 educational profession, and they shall be elected on a
7 nonpartisan ballot.'

8 VII-10 The general government of the
9 University of Nebraska shall, under the direction of the
10 Legislature, be vested in a board of not less than six
11 nor more than eight regents to be designated the Board
12 of Regents of the University of Nebraska, who shall be
13 elected from and by districts as herein provided in this
14 section, and three students of the University of
15 Nebraska who shall serve as nonvoting members. Such
16 nonvoting student members shall consist of the student
17 body president of the University of Nebraska at Lincoln,
18 the student body president of the University of Nebraska
19 at Omaha, and the student body president of the
20 University of Nebraska Medical Center. The terms of
21 office of elected members shall be for six years each.
22 The terms of office of student members shall be for the
23 period of service as student body president. Their

24 duties and powers shall be prescribed by law, ³ and they
1 shall receive no compensation; but may be reimbursed
2 their actual expenses incurred in the discharge of their
3 duties.

4 The Legislature shall divide the state, ~~along~~
5 ~~county lines, into as many compact regent Board of~~
6 ~~Regents districts, as there are regents provided by the~~
7 ~~Legislature, of approximately equal population; which~~
8 ~~shall be numbered consecutively. The Legislature shall~~
9 ~~redistrict the state after each federal decennial~~
10 ~~census. The primary basis for such redistricting shall~~
11 ~~be the population, excluding aliens, as shown by the~~
12 ~~next preceding federal decennial census. In no case~~
13 ~~shall the population of any Board of Regents district,~~
14 ~~at the time redistricting is done, deviate by more than~~
15 ~~two percent from the population figure obtained by~~
16 ~~dividing the population of the state by the number of~~
17 ~~Board of Regents districts. Districts shall be composed~~
18 ~~of contiguous territory, shall be reasonably compact in~~
19 ~~form, and may recognize existing communities of common~~
20 ~~economic interest. District boundaries should respect~~
21 ~~county and municipal lines but may deviate from such~~
22 ~~boundaries in recognition of the other standards set~~
23 ~~forth in this section. No district shall be drawn for~~
24 ~~the purpose of favoring or disfavoring a political~~
1 ~~party, an incumbent, or another person or group.~~

2 Such districts shall not be changed except
3 upon the concurrence of a majority of the members of the
4 Legislature. ~~In any such redistricting, county lines~~
5 ~~shall be followed whenever practicable, but other~~
6 ~~established lines may be followed at the discretion of~~
7 ~~the Legislature. Whenever the state is so redistricted~~
8 ~~the members elected prior to the redistricting shall~~
9 ~~continue in office, and the law providing for such~~
10 ~~redistricting shall where when necessary specify the~~
11 ~~newly established district which they shall represent~~
12 ~~for the balance of their term.'~~

13 'Article III, section 5, of the Constitution
14 of Nebraska is repealed.'".

(Signed) Gerald Conway, Chairperson

SPEAKER SIGNED

While the Legislature was in session and capable of transacting business, the Speaker signed the following resolutions: LR 1 and LR 3.

MOTION - Approve Appointments

Mr. Conway moved the adoption of the report of the Government, Military and Veterans Affairs Committee for the following Governor appointments found in the Journal on page 127: James J. Riskowski and Jack D. Campbell - Crime Victims Reparation Committee and Kim J. Stevens - Aeronautics Director.

Voting in the affirmative, 27:

Baack	Byars	Hartnett	Lamb	Wehrbein
Bernard-	Conway	Hefner	Rogers	Wesely
Stevens	Crosby	Hillman	Schellpeper	Wickersham
Beutler	Dierks	Johnson, L.	Schrock	Will
Beyer	Elmer	Johnson, R.	Warner	Withem
Bohlke	Haberman	Kristensen		

Voting in the negative, 0.

Present and not voting, 9:

Ashford	Cudaback	Nelson	Rasmussen	Schimek
Chizek	Moore	Peterson	Robinson	

Excused and not voting, 13:

Abboud	Hall	Landis	Morrissey	Robak
Chambers	Horgan	Lindsay	Pirsch	Schmit
Coordsen	Labeledz	Lynch		

These appointments were confirmed with 27 ayes, 0 nays, 9 present and not voting, and 13 excused and not voting.

Mr. Rogers moved the adoption of the report of the Agriculture Committee for the following Governor appointment found in the Journal on page 127: Dale Johnson - Nebraska Dry Bean Commission.

Voting in the affirmative, 29:

Baack	Bernard-	Beutler	Bohlke	Chizek
	Stevens	Beyer	Byars	Crosby

Cudaback	Hefner	Nelson	Schellpeper	Wesely
Dierks	Hillman	Peterson	Schrock	Wickersham
Elmer	Johnson, L.	Rasmussen	Warner	Will
Haberman	Lynch	Rogers	Wehrbein	Withem
Hartnett				

Voting in the negative, 0.

Present and not voting, 8:

Ashford	Johnson, R.	Lamb	Robinson	Schimek
Conway	Kristensen	Moore		

Excused and not voting, 12:

Abboud	Hall	Landis	Morrissey	Robak
Chambers	Horgan	Lindsay	Pirsch	Schmit
Coordsen	Labeledz			

The appointment was confirmed with 29 ayes, 0 nays, 8 present and not voting, and 12 excused and not voting.

RESOLUTIONS

LEGISLATIVE RESOLUTION 5. Read. Considered.

LR 5 was adopted with 27 ayes, 0 nays, and 22 not voting.

LEGISLATIVE RESOLUTION 6. Read. Considered.

LR 6 was adopted with 30 ayes, 0 nays, and 19 not voting.

ADJOURNMENT

At 9:27 a.m., on a motion by Mr. Chizek, the Legislature adjourned until 9:00 a.m., Wednesday, August 12, 1992.

Patrick J. O'Donnell
Clerk of the Legislature

printed on recycled paper

SEVENTH DAY - AUGUST 12, 1992

LEGISLATIVE JOURNAL

SEVENTH DAY - AUGUST 12, 1992

LEGISLATIVE JOURNAL

**NINETY-SECOND LEGISLATURE
SECOND SPECIAL SESSION**

SEVENTH DAY

Legislative Chamber, Lincoln, Nebraska
Wednesday, August 12, 1992

Pursuant to adjournment, the Legislature met at 9:02 a.m., President Moul presiding.

PRAYER

The prayer was offered by Rev. Harland Johnson, Chaplain Coordinator.

ROLL CALL

The roll was called and all members were present except Mr. Beyer who was excused; and Messrs. Baack, Bernard-Stevens, Beutler, Byars, Lindsay, Lynch, Schrock, Wickersham, Mmes. Bohlke, and Hillman who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the sixth day was approved.

PRESIDENT SIGNED

While the Legislature was in session and capable of transacting business, the President signed the following resolutions: LR 5 and LR 6.

REPORT OF REGISTERED LOBBYISTS

In accordance with LB 987, passed in the 1976 session of the Legislature and amended by LB 4 and LB 41 in the 1977 session of the Legislature, the attached is a list of all Lobbyists who have

registered as of August 12, 1992. Further lists listing additional lobbyists who have registered will be filed weekly.

(Signed) Patrick J. O'Donnell
Clerk of the Legislature

Cutshall, Bruce A. - Lincoln

Nebraska Hospital Association

MOTION - Suspend Rules

Mr. Warner moved to suspend Rule 6, Section 7 and read bills on Final Reading today.

The motion prevailed with 30 ayes, 0 nays, 8 present and not voting, and 11 excused and not voting.

MOTION - Return LB 1 to Select File

Mr. Moore moved to return LB 1 to Select File for the following specific amendment:

FA3S2

Strike the enacting clause.

Mr. Moore withdrew his motion to return.

ANNOUNCEMENTS

The Chair announced tomorrow is Senator Coordsen's birthday.

The Chair announced next Tuesday is Senator Wehrbein's birthday.

BILLS ON FINAL READING

The following bills were read and put upon final passage:

LEGISLATIVE BILL 1. With Emergency.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 2-2444, 13-501, 13-503, 13-508, 13-509, 14-1821, 15-808, 16-702, 17-955, 17-957, 18-2107, 21-17,126, 23-104, 23-132, 23-227, 23-250, 23-259, 23-320.07, 23-3201, 23-3502, 23-3515, 31-333, 31-410.01, 31-411.02, 31-447, 31-513, 31-711, 31-739, 31-773, 31-779, 32-4,114, 35-507, 39-1518, 39-1621, 46-541, 46-542, 46-543, 46-544, 46-631, 77-101, 77-398, 77-399, 77-3,100, 77-505, 77-506, 77-507.01, 77-508, 77-604, 77-908, 77-1201, 77-1202, 77-1209, 77-1209.02,

77-1209.03, 77-1211, 77-1219, 77-1229, 77-1229.01, 77-1232, 77-1233.02, 77-1233.04, 77-1233.05, 77-1236, 77-1238, 77-1239, 77-1240.01, 77-1241.01, 77-1248, 77-1249, 77-1301, 77-1301.07, 77-1301.12, 77-1303, 77-1311.01, 77-1315, 77-1317, 77-1338, 77-1342, 77-1502, 77-1503.01, 77-1514, 77-1601, 77-1612, 77-1613, 77-1617, 77-1618, 77-1703, 77-1704, 77-1802, 77-1803, 77-1804, 77-1806, 77-1807, 77-1808, 77-1810, 77-1812, 77-1814, 77-1815, 77-1818, 77-1820, 77-1823, 77-1824, 77-1826, 77-1827, 77-1829, 77-1830, 77-1831, 77-1832, 77-1833, 77-1834, 77-1836, 77-1842, 77-1845, 77-1846, 77-1847, 77-1848, 77-1856, 77-1904, 77-1906, 77-1907, 77-1909, 77-1910, 77-1911, 77-1912, 77-1914, 77-1915, 77-1916, 77-1917, 77-1918, 77-27,136, 77-27,137, 77-27,139, 77-3402, 77-3411, 77-3701, 79-547.03, 79-1007, 79-1372, and 79-2210, Reissue Revised Statutes of Nebraska, 1943, as amended by Laws 1992, LB 1063, sections 1 to 19, 21, 22, 24 to 41, 43, 54 to 60, 64, 91 to 93, 111 to 113, 96 to 110, 114, 116 to 125, 129 to 136, 139 to 179, 185 to 189, 195, 196, 198, 199, and 201, respectively, section 79-903, Revised Statutes Supplement, 1990, as amended by Laws 1992, LB 1063, section 197, sections 77-103, 77-112, 77-201, 77-202, 77-509, 77-510, 77-1301.01, 77-1504, 77-1506.02, 77-1736.06, 77-2708, 77-3440, 77-3441, and 79-3814, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 1063, sections 44, 46, 52, 53, 61, 63, 115, 126, 127, 138, 183, 193, 194, and 202, respectively, section 23-3501, Reissue Revised Statutes of Nebraska, 1943, as amended by Laws 1992, LB 1240, section 20, and Laws 1992, LB 1063, section 20, section 23-3552, Reissue Revised Statutes of Nebraska, 1943, as amended by Laws 1992, LB 1019, section 28, and Laws 1992, LB 1063, section 23, section 77-1510, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 360, section 35, and Laws 1992, LB 1063, section 128, section 77-3439, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 1001, section 10, and Laws 1992, LB 1063, section 192, sections 77-3437, 79-2203, 79-3816, and 79-3818, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 245, sections 10, 70, 86, and 88, respectively, and Laws 1992, LB 1063, sections 190, 200, 203, and 204, respectively, section 79-3819, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 245, section 89, Laws 1992, LB 719, section 4, and Laws 1992, LB 1063, section 205, sections 77-2701 and 77-2703, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 871, sections 3 and 25, respectively, and Laws 1992, LB 1063, sections 180 and 182, respectively, Laws 1981, LB 81, section 6, as amended by Laws 1992, LB 1063, section 207, Laws 1981, LB 81, section 5, as amended by Laws 1986, LB 124, section 3, Laws 1991, LB 137, section 2, and Laws 1992, LB 1063, section 206, and Laws 1992, LB 1063, sections 45, 47, 49 to 51, 62, 70, 94, 95, 137, and 181; to reenact provisions of

Laws 1992, LB 1063; to eliminate conditional language relating to passage of a constitutional amendment in 1992; to change operative date and repealer provisions; to eliminate provisions on tax commissioners for cities of the primary class, the applicability of prior legislation, mobile home stickers, and taxation and listing of certain personal property; to harmonize provisions; to provide operative dates; to repeal the original sections, and also sections 13-514, 15-318, 15-319, 15-320, 15-321, 77-103.01, 77-202.46, 77-202.47, 77-1209.04, 77-1209.05, 77-1212, 77-1725, 77-27,140, 77-3702, 77-3703, 77-3704, and 77-3705, Reissue Revised Statutes of Nebraska, 1943, Laws 1992, LB 1063, sections 78 to 90, and Laws 1992, LB 1063, section 94, as amended by section 67 of this legislative bill; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?'"

Voting in the affirmative, 34:

Abboud	Byars	Hillman	Lindsay	Schimek
Ashford	Chizek	Horgan	Nelson	Schrock
Baack	Conway	Johnson, R.	Pirsch	Warner
Bernard-	Crosby	Kristensen	Rasmussen	Wehrbein
Stevens	Cudaback	Labedz	Robak	Wickersham
Beutler	Hall	Lamb	Robinson	Will
Bohlke	Hartnett	Landis	Schellpeper	Withem

Voting in the negative, 12:

Chambers	Elmer	Johnson, L.	Morrissey	Rogers
Coordsen	Haberman	Moore	Peterson	Schmit
Dierks	Hefner			

Present and not voting, 2:

Lynch Wesely

Excused and not voting, 1:

Beyer

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

LEGISLATIVE BILL 2. With Emergency.

A BILL FOR AN ACT relating to appropriations; to appropriate funds for the expenses incurred during the Ninety-second Legislature, Second Special Session, 1992; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?'"

Voting in the affirmative, 46:

Abboud	Coordsen	Horgan	Moore	Schimek
Ashford	Crosby	Johnson, L.	Morrissey	Schmit
Baack	Cudaback	Johnson, R.	Nelson	Schrock
Bernard-	Dierks	Kristensen	Peterson	Warner
Stevens	Elmer	Labeledz	Pirsch	Wehrbein
Beutler	Haberman	Lamb	Rasmussen	Wesely
Bohlke	Hall	Landis	Robak	Wickersham
Byars	Hartnett	Lindsay	Rogers	Will
Chambers	Hefner	Lynch	Schellpeper	Withem
Conway	Hillman			

Voting in the negative, 0.

Present and not voting, 2:

Chizek Robinson

Excused and not voting, 1:

Beyer

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

MOTION - Return LB 3 to Select File

Mr. Withem moved to return LB 3 to Select File for the following specific amendment:

AM049S

(Amendments to Final Reading copy)

1. Strike sections 1, 8, and 10 and insert

- 2 the following new section:
3 "Sec. 7. This act shall become operative on
4 January 1, 1993."
5 2. On page 1, strike beginning with the
6 second "section" in line 4 through the third comma in
7 line 6; and strike beginning with "to" in line 10
8 through the semicolon in line 11.
9 3. On page 2, lines 4 and 5, strike
10 "operative dates" and insert "an operative date".
11 4. On page 7, line 1, strike "4" and insert
12 "3"; and in line 22 strike "4 and 5" and insert "3 and
13 4".
14 5. Renumber the remaining sections
15 accordingly.

Mrs. Labeledz asked unanimous consent to be excused until she returns.
No objections. So ordered.

SPEAKER BAACK PRESIDING

Mr. Coordsen asked unanimous consent to be excused until he returns.
No objections. So ordered.

PRESIDENT MOUL PRESIDING

Mr. Robinson moved the previous question. The question is, "Shall the
debate now close?" The motion prevailed with 25 ayes, 10 nays, and
14 not voting.

Mr. Withem withdrew his motion to return.

Mr. Ashford asked unanimous consent to be excused until he returns.
No objections. So ordered.

Mr. Lamb moved to return LB 3 to Select File for the following
specific amendment:
FA4S2

Strike the enacting clause.

Mr. Lamb withdrew his motion to return.

Mr. Withem moved to return LB 3 to Select File for the following
specific amendment:
FA5S2

Amend LB 3, page 6.

Strike after in line 18 after "amended," through line 20

Mr. Haberman asked unanimous consent to be excused until he returns. No objections. So ordered.

Mr. Robinson moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 26 ayes, 0 nays, and 23 not voting.

Mr. Withem withdrew his motion to return.

BILL ON FINAL READING

The following bill was read and put upon final passage:

LEGISLATIVE BILL 3.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-1229, Reissue Revised Statutes of Nebraska, 1943, as amended by Laws 1992, LB 1063, section 98, section 77-202, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 1063, section 53, section 77-2701, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 871, section 3, and Laws 1992, LB 1063, section 180, and Laws 1992, LB 1063, sections 47 and 181; to exempt livestock from personal property taxation; to change provisions related to listing taxable tangible personal property; to redefine a term; to provide an exemption from the sales and use taxes; to provide filing requirements; to limit the applicability of refund provisions; to harmonize provisions; to provide operative dates; and to repeal the original sections.

Mr. Lamb requested a roll call vote.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 23:

Bernard-	Cudaback	Johnson, L.	Peterson	Schmit
Stevens	Dierks	Johnson, R.	Robak	Schrock
Byars	Elmer	Lamb	Robinson	Wehrbein
Conway	Haberman	Moore	Rogers	Wickersham
Coordsen	Hefner	Morrissey	Schellpeper	

Voting in the negative, 25:

Abboud	Chambers	Hillman	Lindsay	Schimek
Ashford	Chizek	Horgan	Lynch	Warner
Baack	Crosby	Kristensen	Nelson	Wesely
Beutler	Hall	Labeledz	Pirsch	Will
Bohlke	Hartnett	Landis	Rasmussen	Withem

Excused and not voting, 1:

Beyer

Having failed to receive a constitutional majority voting in the affirmative, the bill failed to pass.

PRESIDENT SIGNED

While the Legislature was in session and capable of transacting business, the President signed the following bills: 1 and 2.

VISITORS

Visitors to the Chamber were Chiyo Kamoshita from Japan; and Ray Wilson and Matt Fowler.

RECESS

At 12:10 p.m., on a motion by Speaker Baack, the Legislature recessed until 1:30 p.m.

AFTER RECESS

The Legislature reconvened at 1:32 p.m., President Moul presiding.

ROLL CALL

The roll was called and all members were present except Messrs. Ashford, Beyer, and Lynch who were excused; and Messrs. R. Johnson, Landis, and Morrissey who were excused until they arrive.

PRESENTED TO THE GOVERNOR

Presented to the Governor on August 12, 1992, at 12:20 p.m., were the following bills: 1 and 2.

(Signed) Rosie Ziemis
Clerk of the Legislature's Office

MOTION - Return LB 7 to Select File

Mr. Hefner moved to return LB 7 to Select File for the following specific amendment:

FA6S2

Strike the enacting clause.

Mr. Coordsen asked unanimous consent to be excused until he returns. No objections. So ordered.

Mr. Haberman asked unanimous consent to be excused. No objections. So ordered.

Mr. Robinson moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 26 ayes, 10 nays, and 13 not voting.

Mr. Hefner withdrew his motion to return.

Mrs. Pirsch asked unanimous consent to be excused. No objections. So ordered.

Mr. Bernard-Stevens moved to return LB 7 to Select File for the following specific amendment:

FA7S2

Strike the enacting clause.

Mr. Schellpeper moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 25 ayes, 8 nays, and 16 not voting.

SPEAKER BAACK PRESIDING

Mr. Bernard-Stevens withdrew his motion to return.

Ms. Schimek moved to return LB 7 to Select File for the following specific amendment:

FA8S2

Strike the enacting clause.

Mr. Landis asked unanimous consent to be excused until he returns. No objections. So ordered.

Ms. Schimek withdrew her motion to return.

BILLS ON FINAL READING

The following bills were read and put upon final passage:

LEGISLATIVE BILL 7. With Emergency.

A BILL FOR AN ACT relating to redistricting; to amend sections 50-1101, 50-1118, 50-1120, and 50-1151, Revised Statutes Supplement, 1991, and section 50-1152, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 946, section 1; to change and eliminate provisions relating to legislative districts; to harmonize provisions; to provide operative dates; to repeal the original sections, and also sections 50-1119 and 50-1141, Revised Statutes Supplement, 1991; and to declare an emergency.

Mr. Peterson requested a roll call vote.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?'"

Voting in the affirmative, 29:

Baack	Crosby	Hillman	Peterson	Schmit
Bohlke	Cudaback	Labeledz	Rasmussen	Warner
Byars	Dierks	Landis	Robak	Wesely
Chambers	Elmer	Lindsay	Robinson	Wickersham
Conway	Hall	Morrissey	Rogers	Will
Coordsen	Hartnett	Nelson	Schellpeper	

Voting in the negative, 13:

Abboud	Beutler	Johnson, L.	Lamb	Wehrbein
Bernard-	Hefner	Johnson, R.	Moore	Withem
Stevens	Horgan	Kristensen	Schimek	

Present and not voting, 2:

Chizek Schrock

Excused and not voting, 5:

Ashford Beyer Haberman Lynch Pirsch

Having failed to receive a constitutional two-thirds majority voting in the affirmative, the bill failed to pass with the emergency clause attached. The question is, "Shall the bill pass with the emergency clause stricken?"

Voting in the affirmative, 13:

Abboud	Conway	Landis	Robak	Schmit
Baack	Crosby	Lindsay	Rogers	Wesely
Chambers	Dierks	Peterson		

Voting in the negative, 24:

Bernard-	Coorsden	Johnson, L.	Moore	Warner
Stevens	Elmer	Johnson, R.	Morrissey	Wehrbein
Beutler	Hall	Kristensen	Nelson	Wickersham
Bohlke	Hefner	Labadz	Robinson	Will
Byars	Horgan	Lamb	Schimek	Withem

Present and not voting, 7:

Chizek	Hartnett	Rasmussen	Schellpeper	Schrock
Cudaback	Hillman			

Excused and not voting, 5:

Ashford Beyer Haberman Lynch Pirsch

Having failed to receive a constitutional majority voting in the affirmative with the emergency clause stricken, the bill failed to pass.

LEGISLATIVE BILL 9. With Emergency.

A BILL FOR AN ACT relating to elections; to amend sections 32-424 and 32-537, Reissue Revised Statutes of Nebraska, 1943; to change provisions relating to petitioning on the ballot for the general election; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?'"

Voting in the affirmative, 16:

Abboud	Cudaback	Johnson, R.	Landis	Schmit
Chizek	Hall	Kristensen	Lindsay	Warner
Conway	Hartnett	Labeledz	Rogers	Wesely
Crosby				

Voting in the negative, 22:

Baack	Byars	Horgan	Peterson	Schrock
Bernard-	Coordsen	Johnson, L.	Robinson	Wickersham
Stevens	Dierks	Lamb	Schellpeper	Will
Beutler	Elmer	Moore	Schimek	Withem
Bohlke	Hefner	Nelson		

Present and not voting, 6:

Chambers	Morrissey	Rasmussen	Robak	Wehrbein
Hillman				

Excused and not voting, 5:

Ashford	Beyer	Haberman	Lynch	Pirsch
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Having failed to receive a constitutional two-thirds majority voting in the affirmative, the bill failed to pass with the emergency clause attached. The question is, "Shall the bill pass with the emergency clause stricken?"

Voting in the affirmative, 19:

Abboud	Cudaback	Johnson, R.	Lindsay	Warner
Byars	Elmer	Kristensen	Rogers	Wehrbein
Chizek	Hall	Labeledz	Schmit	Wesely
Crosby	Hartnett	Landis	Schrock	

Voting in the negative, 20:

Baack	Coordsen	Johnson, L.	Nelson	Schimek
Bernard-	Dierks	Lamb	Rasmussen	Wickersham
Stevens	Hefner	Moore	Robinson	Will
Beutler	Horgan	Morrissey	Schellpeper	Withem
Bohlke				

Present and not voting, 5:

Chambers Conway Hillman Peterson Robak

Excused and not voting, 5:

Ashford Beyer Haberman Lynch Pirsch

Having failed to receive a constitutional majority voting in the affirmative with the emergency clause stricken, the bill failed to pass.

LEGISLATIVE BILL 15. With Emergency.

A BILL FOR AN ACT relating to redistricting; to amend sections 50-1139 and 50-1145, Revised Statutes Supplement, 1991, and section 50-1152, Revised Statutes Supplement, 1991, as amended by Laws 1992, LB 946, section 1; to change provisions relating to legislative districts; to change operative date provisions; to repeal the original sections; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?'"

Voting in the affirmative, 17:

Abbound	Chizek	Horgan	Landis	Schrock
Beutler	Cudaback	Kristensen	Nelson	Warner
Bohlke	Elmer	Labeledz	Schmit	Wehrbein
Byars	Hall			

Voting in the negative, 23:

Baack	Crosby	Johnson, R.	Rasmussen	Wesely
Bernard-	Hartnett	Lamb	Robak	Wickersham
Stevens	Hefner	Lindsay	Robinson	Will
Conway	Hillman	Moore	Schellpeper	Withem
Coordsen	Johnson, L.	Morrissey	Schimek	

Present and not voting, 4:

Chambers Dierks Peterson Rogers

Excused and not voting, 5:

Ashford Beyer Haberman Lynch Pirsch

Having failed to receive a constitutional two-thirds majority voting in the affirmative, the bill failed to pass with the emergency clause attached. The question is, "Shall the bill pass with the emergency clause stricken?"

Voting in the affirmative, 14:

Abboud	Byars	Kristensen	Rogers	Warner
Beutler	Chizek	Landis	Schmit	Wehrbein
Bohlke	Cudaback	Nelson	Schrock	

Voting in the negative, 26:

Baack	Dierks	Johnson, L.	Morrissey	Schimek
Bernard-	Hall	Johnson, R.	Rasmussen	Wesely
Stevens	Hartnett	Lamb	Robak	Wickersham
Conway	Hefner	Lindsay	Robinson	Will
Coordsen	Hillman	Moore	Schellpeper	Withem
Crosby	Horgan			

Present and not voting, 4:

Chambers	Elmer	Labeledz	Peterson
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Excused and not voting, 5:

Ashford	Beyer	Haberman	Lynch	Pirsch
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Having failed to receive a constitutional majority voting in the affirmative with the emergency clause stricken, the bill failed to pass.

UNANIMOUS CONSENT - Members Excused

Messrs. Dierks, Elmer, Landis, and Mrs. Hillman asked unanimous consent to be excused until they return. No objections. So ordered.

Mr. L. Johnson asked unanimous consent to be excused. No objections. So ordered.

RESOLUTION

LEGISLATIVE RESOLUTION 4. Read. Considered.

LR 4 was adopted with 26 ayes, 0 nays, and 23 not voting.

MOTION - Reconsider Action on LB 7

Mr. Abboud moved to reconsider the Final Reading vote on LB 7 with the emergency clause attached.

PRESIDENT MOUL PRESIDING

Ms. Schimek moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 26 ayes, 0 nays, and 23 not voting.

Mr. Conway moved to compel the attendance of the members pursuant to Rule 2, Section 4(b).

Mr. Lamb asked unanimous consent to be excused until he returns. No objections. So ordered.

Mr. Hefner moved to adjourn sine die.

Mr. Chambers requested to compel the attendance of the members.

The Chair ruled the request out of order because a motion to adjourn has priority status over all other motions.

Mr. Chambers challenged the ruling of the Chair.

The Chair ruled the Chambers' challenge of the Chair out of order.

Mr. Chambers requested a roll call vote on the Hefner motion to adjourn sine die.

Voting in the affirmative, 3:

Chizek	Hefner	Lamb
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Voting in the negative, 36:

Abboud	Coordsen	Hillman	Morrissey	Schimek
Baack	Crosby	Horgan	Nelson	Schmit
Beutler	Cudaback	Kristensen	Peterson	Warner
Bohlke	Dierks	Labadz	Rasmussen	Wehrbein
Byars	Elmer	Landis	Robinson	Wesely
Chambers	Hall	Lindsay	Rogers	Wickersham
Conway	Hartnett	Moore	Schellpeper	Will

Withem

Present and not voting, 4:

Bernard- Johnson, R. Robak Schrock
Stevens

Excused and not voting, 6:

Ashford Haberman Johnson, L. Lynch Pirsch
Beyer

The Hefner motion to adjourn lost with 3 ayes, 36 nays, 4 present and not voting, and 6 excused and not voting.

The Conway motion to compel attendance prevailed with 25 ayes, 14 nays, 4 present and not voting, and 6 excused and not voting.

SPEAKER BAACK PRESIDING

MR. MORRISSEY PRESIDING

PRESIDENT MOUL PRESIDING

Mr. Conway moved to reconsider the vote on his motion to compel the attendance of the members.

The Conway motion to reconsider prevailed with 28 ayes, 1 nay, 17 present and not voting, and 3 excused and not voting.

Mr. Conway withdrew his reconsidered motion to compel the attendance of the members.

The Abboud pending motion to reconsider the Final Reading vote on LB 7 with the emergency clause attached, was renewed.

The Abboud motion to reconsider prevailed with 33 ayes, 12 nays, 1 present and not voting, and 3 excused and not voting.

BILL ON FINAL READING

The following bill was put upon final passage:

LEGISLATIVE BILL 7. With Emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?'"

Voting in the affirmative, 34:

Abboud	Conway	Hartnett	Nelson	Schmit
Ashford	Coordsen	Hillman	Peterson	Schrock
Baack	Crosby	Labeledz	Rasmussen	Warner
Bohlke	Cudaback	Landis	Robak	Wesely
Byars	Dierks	Lindsay	Robinson	Wickersham
Chambers	Elmer	Lynch	Rogers	Will
Chizek	Hall	Morrissey	Schellpeper	

Voting in the negative, 12:

Bernard-	Beyer	Johnson, R.	Moore	Wehrbein
Stevens	Hefner	Kristensen	Schimek	Withem
Beutler	Horgan	Lamb		

Excused and not voting, 3:

Haberman Johnson, L. Pirsch

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

MOTION - Reconsider Action on LB 9

Mr. Elmer moved to reconsider the Final Reading vote of LB 9 with emergency clause attached.

The Elmer motion to reconsider prevailed with 36 ayes, 0 nays, 10 present and not voting, and 3 excused and not voting.

MOTION - Return LB 9 to Select File

Mr. Bernard-Stevens moved to return LB 9 to Select File for the following specific amendment:

FA9S2

Strike the enacting clause.

Mr. Bernard-Stevens withdrew his motion to return.

BILL ON FINAL READING

The following bill was put upon final passage:

LEGISLATIVE BILL 9. With Emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?'"

Voting in the affirmative, 40:

Abboud	Conway	Hefner	Moore	Schimek
Ashford	Coordsen	Hillman	Nelson	Schmit
Baack	Crosby	Horgan	Peterson	Warner
Bernard-	Cudaback	Johnson, R.	Rasmussen	Wehrbein
Stevens	Dierks	Kristensen	Robak	Wesely
Beyer	Elmer	Labeledz	Robinson	Wickersham
Bohlke	Hall	Landis	Rogers	Will
Byars	Hartnett	Lindsay	Schellpeper	Withem
Chizek				

Voting in the negative, 0.

Present and not voting, 6:

Beutler	Lamb	Lynch	Morrissey	Schrock
Chambers				

Excused and not voting, 3:

Haberman	Johnson, L.	Pirsch
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A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

PRESIDENT SIGNED

While the Legislature was in session and capable of transacting business, the President signed the following resolution: LR 4.

MOTION - Reconsider Action on LB 15

Mr. Conway moved to reconsider the vote on final passage of LB 15 with the emergency clause stricken.

The Conway motion to reconsider prevailed with 34 ayes, 0 nays, 12 present and not voting, and 3 excused and not voting.

BILL ON FINAL READING

The following bill was put upon final passage:

LEGISLATIVE BILL 15.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?'"

Voting in the affirmative, 39:

Abboud	Chambers	Hall	Landis	Rogers
Ashford	Chizek	Hartnett	Moore	Schellpeper
Baack	Conway	Hefner	Morrissey	Schmit
Bernard-	Coordsen	Horgan	Nelson	Schrock
Stevens	Crosby	Johnson, R.	Peterson	Warner
Beutler	Cudaback	Kristensen	Rasmussen	Wehrbein
Bohlke	Dierks	Labedz	Robak	Wesely
Byars	Elmer	Lamb	Robinson	Will

Voting in the negative, 0.

Present and not voting, 7:

Beyer	Lindsay	Schimek	Wickersham	Withem
Hillman	Lynch			

Excused and not voting, 3:

Haberman	Johnson, L.	Pirsch
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A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

MOTION - Reconsider Action on LB 3

Mr. Beyer moved to reconsider the vote on LB 3.

Pending.

MOTION - Adjourn Sine Die

Mr. Beutler moved to adjourn sine die. The motion lost with 20 ayes, 21 nays, 5 present and not voting, and 3 excused and not voting.

PRESIDENT SIGNED

While the Legislature was in session and capable of transacting business, the President signed the following bills: 7, 9, and 15.

MOTION - Reconsider Action on LB 3

The Beyer pending motion to reconsider the vote on LB 3, was renewed.

Mr. Wesely moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 35 ayes, 0 nays, and 14 not voting.

The Beyer motion to reconsider lost with 21 ayes, 22 nays, 3 present and not voting, and 3 excused and not voting.

MOTION - Approve Appointment

Mr. Chizek moved the adoption of the report of the Judiciary Committee for the following Governor appointment found in the Journal on page 128: Steven M. Renteria - Nebraska Parole Board, Chairman.

Messrs. Morrissey, Lamb, R. Johnson, and Hefner asked unanimous consent to be excused. No objections. So ordered.

Pending.

**SELECT COMMITTEE REPORT
Enrollment and Review**

Correctly Enrolled

The following bill was correctly enrolled: 15.

(Signed) Eric Will, Chairperson

MOTION - Approve Appointment

The Chizek pending motion that the adoption of the report of the Judiciary Committee for the following Governor appointment found in the Journal on page 128 and considered in this day's Journal: Steven M. Renteria - Nebraska Parole Board, Chairman, was renewed.

Mr. Schellpeper moved the previous question. The question is, "Shall the debate now close?"

Mr. Schellpeper moved for a call of the house. The motion prevailed with 20 ayes, 0 nays, and 29 not voting.

The motion to cease debate prevailed with 25 ayes, 3 nays, and 21 not voting.

Mr. Chizek requested a roll call vote on the Judiciary Committee confirmation report.

Voting in the affirmative, 18:

Abboud	Dierks	Horgan	Moore	Wesely
Beyer	Elmer	Labeledz	Nelson	Wickersham
Bohlke	Hall	Lindsay	Robak	Will
Chizek	Hillman	Lynch		

Voting in the negative, 14:

Baack	Beutler	Crosby	Landis	Schmit
Bernard-	Byars	Hartnett	Rasmussen	Warner
Stevens	Chambers	Kristensen	Schellpeper	Wehrbein

Present and not voting, 10:

Ashford	Coordsen	Peterson	Rogers	Schrock
Conway	Cudaback	Robinson	Schimek	Withem

Excused and not voting, 7:

Haberman	Johnson, L.	Lamb	Morrissey	Pirsch
Hefner	Johnson, R.			

The Judiciary Committee confirmation report was not adopted with 18 ayes, 14 nays, 10 present and not voting, and 7 excused and not voting.

The Chair declared the call raised.

Mr. Withem asked unanimous consent to be excused. No objections. So ordered.

STANDING COMMITTEE REPORT General Affairs

The Committee on General Affairs desires to report favorably upon the appointment listed below. The Committee suggests the appointment be confirmed by the Legislature and suggests a record vote.

John (Jack) M. Crowley - Nebraska Liquor Control Commission

VOTE: Aye: Senators Schellpeper, Will, Cudaback, Hartnett, R. Johnson, Labedz, Rasmussen, and Rogers. Nay: none. Not Voting: none. Absent: none.

(Signed) Stan Schellpeper, Chairperson

MOTION - Approve Appointment

Mr. Schellpeper moved the adoption of the report of the General Affairs Committee for the following Governor appointment found in this day's Journal: John (Jack) M. Crowley - Nebraska Liquor Control Commission.

Voting in the affirmative, 31:

Abboud	Byars	Hartnett	Peterson	Schmit
Ashford	Coordsen	Hillman	Rasmussen	Schrock
Baack	Crosby	Horgan	Robinson	Warner
Bernard-	Cudaback	Labedz	Rogers	Wehrbein
Stevens	Dierks	Lindsay	Schellpeper	Wesely
Beyer	Elmer	Nelson	Schimek	Wickersham
Bohlke	Hall			

Voting in the negative, 0.

Present and not voting, 10:

Beutler	Chizek	Kristensen	Lynch	Robak
Chambers	Conway	Landis	Moore	Will

Excused and not voting, 8:

Haberman	Johnson, L.	Lamb	Pirsch	Withem
Hefner	Johnson, R.	Morrissey		

The appointment was confirmed with 31 ayes, 0 nays, 10 present and not voting, and 8 excused and not voting.

Mrs. Hillman asked unanimous consent to be excused. No objections. So ordered.

STANDING COMMITTEE REPORT

Transportation

The Committee on Transportation desires to report favorably upon the appointments listed below. The Committee suggests the appointments be confirmed by the Legislature and suggests a record vote.

Motor Vehicle Industry Licensing Board

Vera Dulaney

Board of Public Roads, Classification and Standards

James W. Bauer

Eldon Orth

Henry R. Thieman

David O. Janke

Larry L. Herrmann

David L. Coolidge

Ed Gilbert

VOTE: Aye: Senators Beyer, Byars, Robak, Wickersham, and Kristensen. Nay: none. Absent: Senators Horgan, Peterson, and Pirsch.

(Signed) Doug Kristensen, Chairperson

MOTION - Approve Appointments

Mr. Kristensen moved the adoption of the report of the Transportation Committee for the following Governor appointments found in this day's Journal: Vera Dulaney - Motor Vehicle Industry Licensing Board; and James W. Bauer, Eldon Orth, Henry R. Thieman, David O. Janke, Larry L. Herrmann, David L. Coolidge, and Ed Gilbert - Board of Public Roads, Classification and Standards.

Voting in the affirmative, 30:

Abboud	Byars	Hall	Lindsay	Rogers
Baack	Coorsden	Hartnett	Lynch	Schmit
Bernard-	Crosby	Horgan	Nelson	Warner
Stevens	Cudaback	Kristensen	Peterson	Wehrbein
Beutler	Dierks	Labadz	Rasmussen	Wesely
Beyer	Elmer	Landis	Robinson	Wickersham
Bohlke				

Voting in the negative, 0.

Present and not voting, 10:

Ashford	Chizek	Moore	Schellpeper	Schrock
Chambers	Conway	Robak	Schimek	Will

Excused and not voting, 9:

Haberman	Hillman	Johnson, R.	Morrissey	Withem
Hefner	Johnson, L.	Lamb	Pirsch	

These appointments were confirmed with 30 ayes, 0 nays, 10 present and not voting, and 9 excused and not voting.

MOTION - Suspend Rules

Mr. Robinson moved to suspend the rules, Rule 4, Section 6 to allow consideration of Legislative Resolution 7.

The motion to suspend the rules prevailed with 31 ayes, 0 nays, 9 present and not voting, and 9 excused and not voting.

RESOLUTION

LEGISLATIVE RESOLUTION 7. Introduced by Robinson, 16.

WHEREAS, the Blair Little League baseball team won the state championship for the 11 and 12 year old class; and

WHEREAS, the Blair team is representing all of Nebraska in the Central Regional Little League Tournament in Indianapolis, Indiana; and

WHEREAS, the head coach of the team is George Hall and the assistant coaches are Steve Cook and Tim Brown; and

WHEREAS, the dedication and hard work of the players, parents, and coaches is an inspiration to the Blair community, and the whole state should be proud to have this team represent it in Indianapolis; and

WHEREAS, the Legislature should congratulate the Blair Little League baseball team on its achievements.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SECOND LEGISLATURE OF NEBRASKA, SECOND SPECIAL SESSION:

1. That the Legislature recognize and congratulate the Blair Little League baseball team on its recent championship.

2. That a copy of this resolution be sent to head coach George Hall.

LR 7 was adopted with 30 ayes, 0 nays, and 19 not voting.

PRESENTED TO THE GOVERNOR

Presented to the Governor on August 12, 1992, at 8:00 p.m., were the following bills: 7, 9, and 15.

(Signed) Rosie Ziems
Clerk of the Legislature's Office

MESSAGE FROM THE GOVERNOR

August 12, 1992

Patrick J. O'Donnell
Clerk of the Legislature
State Capitol, Room 2018
Lincoln, NE 68509

Dear Mr. O'Donnell:

Engrossed Legislative Bills 1 and 2 were received in my office on August 12, 1992.

These bills were signed by me on August 12, 1992, and delivered to the Secretary of State.

Sincerely,
(Signed) E. Benjamin Nelson
Governor

MOTION - Advise Governor

Mr. Schrock moved that a committee of five (5) be appointed to advise the Governor that the Ninety-Second Legislature, Second Special Session, of the Nebraska State Legislature is about to complete its work, and to return with any message the Governor may have for the Legislature.

The motion prevailed.

The Chair appointed Messrs. Warner, Kristensen, Horgan, Hall, and Mrs. Robak to serve on said Committee.

The Committee returned and escorted Governor Ben Nelson to the rostrum where he delivered a message to the members.

The Committee escorted the Governor from the Chamber.

MOTION - Approve Journal

Mrs. Labeledz moved that the Legislative Journal for the Seventh Day be approved as prepared by the Clerk.

The motion prevailed.

VISITORS

Visitors to the Chamber were Senator Byars' brother and sister-in-law, Ron and Susan Byars, from Kentucky; and Kelley Nelson.

MOTION - Adjourn Sine Die

Mr. Baack moved that the Ninety-Second Legislature, Second Special Session, of the Nebraska State Legislature, having finished all business before it, now at 8:23 p.m., adjourn sine die.

The motion prevailed.

Patrick J. O'Donnell
Clerk of the Legislature

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RECEIVED AFTER ADJOURNMENT
LEGISLATIVE JOURNAL

RECEIVED AFTER ADJOURNMENT

LEGISLATIVE JOURNAL

**NINETY-SECOND LEGISLATURE
SECOND SPECIAL SESSION**

MESSAGE FROM THE GOVERNOR

August 14, 1992

Patrick J. O'Donnell
Clerk of the Legislature
State Capitol, Room 2018
Lincoln, NE 68509

Dear Mr. O'Donnell:

Engrossed Legislative Bills 7e, 9e, and 15 were received in my office on August 12, 1992.

These bills were signed by me on August 14, 1992 and delivered to the Secretary of State.

Sincerely,
(Signed) E. Benjamin Nelson
Governor

CERTIFICATE

I, Patrick J. O'Donnell, Clerk of the Legislature, hereby certify that the foregoing communication is a true and correct copy of the letter provided concerning action on bills after adjournment of the Ninety-Second Legislature, Second Special Session.

Patrick J. O'Donnell
Clerk of the Legislature

August 14, 1992
Lincoln, Nebraska

CHRONOLOGY OF BILLS
NINETY-SECOND LEGISLATURE
SECOND SPECIAL SESSION
1992

LEGISLATIVE BILL 1. By Warner, Hall, Landis, Withem, at the request of the Governor

July	31	Read first time	45
July	31	Referred to Committee on Revenue	55
July	31	Notice of hearing (8/3)	57
July	31	Lamb-Rogers-Peterson-R. Johnson-Cudaback- Dierks-Coordsen-Elmer-Byars-Moore-Hefner- L. Johnson-Beyer-Schellpeper-Schrock- Schmit AM002S printed	60
Aug.	5	Placed on General File	61
Aug.	5	Advanced for Review	77
Aug.	6	Placed on Select File - AM5300	80
Aug.	6	AM5300 (E & R) adopted. Lamb et al pending AM002S p. 60 withdrawn. Advanced for Engrossment	84
Aug.	7	Correctly Engrossed	98
Aug.	12	Moore motion to return to Select File for FA3S2 withdrawn. Final Reading w/E 34-12-3	139
Aug.	12	President signed. Presented to Governor (8/12)	145
Aug.	12	Approved by Governor (8/12)	162

LEGISLATIVE BILL 2. By Warner, Baack

July	31	Read first time	47
July	31	Placed on General File	55
Aug.	5	Advanced for Review	76
Aug.	5	Placed on Select File	78
Aug.	10	Advanced for Engrossment	120
Aug.	10	Correctly Engrossed	129
Aug.	12	Warner motion to suspend rules prevailed	139
Aug.	12	Final Reading w/E 46-0-3	142
Aug.	12	President signed. Presented to Governor (8/12)	145
Aug.	12	Approved by Governor (8/12)	162

LEGISLATIVE BILL 3. By Hefner

July	31	Read first time	47
July	31	Referred to Committee on Revenue	55
July	31	Notice of hearing (8/3)	57
Aug.	5	Placed on General File - Com AM014S	61
Aug.	5	Committee AM014S adopted as amended by Moore AM016S. Advanced for Review	77
Aug.	6	Placed on Select File - AM5301	81
Aug.	6	L. Johnson name added	83
Aug.	6	Hall AM021S to AM5301 printed	89
Aug.	6	Lamb-Haberman-Wickersham-Elmer-Byars- Coordsen-Schmit-Hefner-R. Johnson- Schrock-Cudaback-Wehrbein-Schellpeper- Dierks-Peterson-Beyer-Robinson-Bohlke- Robak AM020S to AM5301 printed	94
Aug.	7	AM5301 (E & R) adopted. Hall pending AM021S p. 89 lost. Lamb et al pending AM020S p. 94 and Moore AM034S adopted. Advanced for Engrossment	102
Aug.	10	Correctly Engrossed. ER7185 change	109
Aug.	12	Warner motion to suspend rules prevailed	139
Aug.	12	Withem motion to return to Select File for AM049S withdrawn	142
Aug.	12	Lamb motion to return to Select File for FA4S2 and Withem motion to return to Select File for FA5S2 withdrawn	143
Aug.	12	Failed on Final Reading 23-25-1	144
Aug.	12	Beyer motion to reconsider Final Reading vote pending	156
Aug.	12	Beyer pending motion p. 156 lost	157

LEGISLATIVE BILL 4. By Bernard-Stevens, Withem

July	31	Read first time	47
July	31	Referred to Committee on Government, Military and Veterans Affairs	55
July	31	Notice of hearing (8/4)	58
Aug.	12	Indefinitely postponed, pursuant to Rule 9, Sec. 8	

LEGISLATIVE BILL 5. By Bernard-Stevens

July	31	Read first time	47
July	31	Referred to Committee on Government,	

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		Military and Veterans Affairs	56
July	31	Notice of hearing (8/4)	58
Aug.	12	Indefinitely postponed, pursuant to Rule 9, Sec. 8	

LEGISLATIVE BILL 6. By Elmer, Dierks, R. Johnson, Peterson, Schellpeper

July	31	Read first time	48
July	31	Referred to Committee on Government, Military and Veterans Affairs	56
July	31	Notice of hearing (8/4)	58
Aug.	12	Indefinitely postponed, pursuant to Rule 9, Sec. 8	

LEGISLATIVE BILL 7. By Conway

July	31	Read first time	48
July	31	Referred to Committee on Government, Military and Veterans Affairs	56
July	31	Notice of hearing (8/4)	58
Aug.	6	Placed on General File - Com AM022S	84
Aug.	6	Committee AM022S pending	87
Aug.	6	Hefner FA1S2 lost. Committee AM022S adopted. Advanced for Review	89
Aug.	7	Placed on Select File - AM5303	97
Aug.	10	AM5303 (E & R) adopted. Hefner-Bernard- Stevens-Schimek AM036S and Withem FA2S2 lost. Pending	114
Aug.	10	Pending	119
Aug.	10	Conway AM047S adopted. Advanced for Engrossment	124
Aug.	10	Correctly Engrossed. ER7188 change	129
Aug.	12	Warner motion to suspend rules prevailed	139
Aug.	12	Hefner motion to return to Select File for FA6S2, Bernard-Stevens motion to return to Select File for FA7S2, and Schimek motion to return to Select File for FA8S2 withdrawn	146
Aug.	12	Failed on Final Reading w/E 29-13-7	147
Aug.	12	Failed on Final Reading 13-24-12	148
Aug.	12	Abboud motion to reconsider Final Reading vote w/E prevailed. Conway motion to compel attendance by all members prevailed. Challenge of Chair ruled out of order. Conway motion to reconsider vote to compel attendance prevailed. Conway reconsidered motion withdrawn	152
Aug.	12	Final Reading w/E 34-12-3	154

Aug. 12	President signed	157
Aug. 12	Presented to Governor (8/12)	162
Aug. 14	Approved by Governor (8/14)	164

LEGISLATIVE BILL 8. By Conway

July 31	Read first time	48
July 31	Referred to Committee on Government, Military and Veterans Affairs	56
July 31	Notice of hearing (8/4)	58
Aug. 12	Indefinitely postponed, pursuant to Rule 9, Sec. 8	

LEGISLATIVE BILL 9. By Conway

July 31	Read first time	48
July 31	Referred to Committee on Government, Military and Veterans Affairs	56
July 31	Notice of hearing (8/4)	58
Aug. 6	Placed on General File - Com AM024S	92
Aug. 6	Committee AM024S adopted. Advanced for Review	94
Aug. 7	Placed on Select File - AM5302	98
Aug. 7	AM5302 (E & R) adopted. Peterson AM035S lost. Advanced for Engrossment	105
Aug. 10	Correctly Engrossed	109
Aug. 10	Returned to Select File for Conway amendment. Conway AM037S adopted. Advanced for Reengrossment	120
Aug. 10	Returned to Select File for Bernard-Stevens amendment. Bernard-Stevens AM038S lost. Advanced for Reengrossment	123
Aug. 10	Correctly Reengrossed. ER7186 change	129
Aug. 12	Warner motion to suspend rules prevailed	139
Aug. 12	Failed on Final Reading w/E 16-22-11	148
Aug. 12	Failed on Final Reading 19-20-10	149
Aug. 12	Elmer motion to reconsider Final Reading vote w/E prevailed. Bernard-Stevens motion to return to Select File for FA9S2 withdrawn	154
Aug. 12	Final Reading w/E 40-0-9	155
Aug. 12	President signed	157
Aug. 12	Presented to Governor (8/12)	162
Aug. 14	Approved by Governor (8/14)	164

LEGISLATIVE BILL 10. By L. Johnson, Hefner

July 31	Read first time	48
July 31	Referred to Committee on Government, Military and Veterans Affairs	56
July 31	Notice of hearing (8/4)	58
Aug. 12	Indefinitely postponed, pursuant to Rule 9, Sec. 8	

LEGISLATIVE BILL 11. By Dierks

July 31	Read first time	54
July 31	Referred to Committee on Government, Military and Veterans Affairs	56
July 31	Notice of hearing (8/4)	58
Aug. 12	Indefinitely postponed, pursuant to Rule 9, Sec. 8	

LEGISLATIVE BILL 12. By Schellpeper, Dierks

July 31	Read first time	54
July 31	Referred to Committee on Government, Military and Veterans Affairs	56
July 31	Notice of hearing (8/4)	59
Aug. 12	Indefinitely postponed, pursuant to Rule 9, Sec. 8	

LEGISLATIVE BILL 13. By Schellpeper

July 31	Read first time	54
July 31	Referred to Committee on Government, Military and Veterans Affairs	56
July 31	Notice of hearing (8/4)	59
Aug. 12	Indefinitely postponed, pursuant to Rule 9, Sec. 8	

LEGISLATIVE BILL 14. By Conway

July 31	Read first time	54
July 31	Referred to Committee on Government, Military and Veterans Affairs	56
July 31	Notice of hearing (8/4)	58
Aug. 12	Indefinitely postponed, pursuant to Rule 9, Sec. 8	

LEGISLATIVE BILL 15. By Schrock, Elmer

July 31	Read first time	55
July 31	Referred to Committee on Government,	

		Military and Veterans Affairs	56
July	31	Notice of hearing (8/4)	59
Aug.	6	Placed on General File.	
		Haberman requested ruling of Chair.	
		Haberman motion to indefinitely postpone	
		lost. Advanced for Review	92
Aug.	7	Placed on Select File	98
Aug.	10	Attorney General's Opinion #92100 to Haberman	110
Aug.	10	Schrock-Elmer AM032S adopted.	
		Advanced for Engrossment	119
Aug.	10	Correctly Engrossed. ER7187 change	129
Aug.	12	Warner motion to suspend rules prevailed	139
Aug.	12	Failed on Final Reading w/E 17-23-9	150
Aug.	12	Failed on Final Reading 14-26-9	151
Aug.	12	Conway motion to reconsider Final Reading	
		vote prevailed	155
Aug.	12	Final Reading 39-0-10	156
Aug.	12	President signed. Correctly Enrolled	157
Aug.	12	Presented to Governor (8/12)	162
Aug.	14	Approved by Governor (8/14)	164

LEGISLATIVE BILL 16. By Schrock

July	31	Read first time	55
July	31	Referred to Committee on Government,	
		Military and Veterans Affairs	56
July	31	Notice of hearing (8/4)	59
Aug.	12	Indefinitely postponed, pursuant to Rule 9, Sec. 8	

**CHRONOLOGY OF CONSTITUTIONAL
AMENDMENT RESOLUTIONS**

**NINETY-SECOND LEGISLATURE
SECOND SPECIAL SESSION
1992**

**LEGISLATIVE RESOLUTION 2CA. By Beutler, Bernard-Stevens,
Conway, Horgan, Labedz**

July	31	Read first time	49
July	31	Referred to Reference Committee	54
July	31	Referred to Committee on Government, Military and Veterans Affairs	56
July	31	Notice of hearing (8/4)	59
Aug.	11	Placed on General File - Com AM045S	131
Aug.	12	Indefinitely postponed, pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILLS AND
CONSTITUTIONAL AMENDMENT RESOLUTIONS
BY INTRODUCERS**

DAVID F. BERNARD-STEVENS

LB

- 4* Change and eliminate provisions relating to legislative districts.
- 5 Change provisions relating to petitioning on the ballot for the general election.

LR

- 2CA* Constitutional amendment to change and provide standards for redistricting.

CHRIS BEUTLER

LR

- 2CA* Constitutional amendment to change and provide standards for redistricting.

GERALD CONWAY

LB

- 7 Change and eliminate provisions relating to legislative districts.
- 8 Eliminate provisions relating to legislative districts.
- 9 Change provisions for petitioning on the ballot for the general election.
- 14 Change and eliminate provisions relating to legislative districts.

LR

- 2CA* Constitutional amendment to change and provide standards for redistricting.

MERTON L. DIERKS

LB

- 6* Change and eliminate provisions relating to legislative districts.
- 11 Change and eliminate provisions relating to legislative districts.
- 12* Change and eliminate provisions relating to legislative districts.

BILLS AND CONSTITUTIONAL AMENDMENT
RESOLUTIONS BY INTRODUCERS

173

W. OWEN ELMER

- LB**
6* Change and eliminate provisions relating to legislative districts.
15* Change provisions relating to legislative districts.

TIMOTHY J. HALL

- LB**
1*** Change provisions relating to revenue and taxation.

ELROY M. HEFNER

- LB**
3* Provide for a tax credit against income tax.
10* Change and eliminate provisions relating to legislative districts.

THOMAS R. HORGAN

- LR**
2CA* Constitutional amendment to change and provide standards for redistricting.

LOWELL C. JOHNSON

- LB**
3* Provide for a tax credit against income tax.
10* Change and eliminate provisions relating to legislative districts.

ROD JOHNSON

- LB**
6* Change and eliminate provisions relating to legislative districts.

BERNICE LABEDZ

- LR**
2CA* Constitutional amendment to change and provide standards for redistricting.

DAVID LANDIS

- LB**
1*** Change provisions relating to revenue and taxation.

RICHARD PETERSON**LB****6***

Change and eliminate provisions relating to legislative districts.

STAN SCHELLPEPER**LB****6***

Change and eliminate provisions relating to legislative districts.

12*

Change and eliminate provisions relating to legislative districts.

13

Change and eliminate provisions relating to legislative districts.

EDWARD J. SCHROCK**LB****15***

Change provisions relating to legislative districts.

16

Change provisions relating to legislative districts.

JEROME WARNER**LB****1*****

Change provisions relating to revenue and taxation.

2

Appropriate funds for special session expenses.

RON WITHEM**LB****1*****

Change provisions relating to revenue and taxation.

4*

Change and eliminate provisions relating to legislative districts.

With others.

At the request of the Governor.

With others and at the request of the Governor.

**LEGISLATIVE BILLS AND RESOLUTIONS
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5	8	11	13	15	LR2CA
6	9				

Revenue**Chairperson - Timothy J. Hall**

1	3
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SUMMARY OF LEGISLATION

Ninety-Second Legislature, Second Special Session

The following table shows the final disposition:

Total Number of Bills Introduced	16
Total Number of Resolutions Introduced	7

Approved by Governor: (5)

LB1e	LB2e	LB7e	LB9e	LB15
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Failed on Final Reading: (1)

3

Indefinitely Postponed: (11)

LB4	LB6	LB10	LB12	LB14	LR2CA
LB5	LB8	LB11	LB13	LB16	

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LR1	LR3	LR4	LR5	LR6	LR7
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